

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge

—————
DAVID BOGGS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000760

—————
APPENDIX
—————

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 David Ronald Boggs, III,) 2015-GS-42-2327
6 Defendant.) July 25 & 26, 2016
7) Spartanburg, South Carolina

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury

14 A P P E A R A N C E S:

15 DERRICK BRUCE BULSA, ESQUIRE
16 Attorney for the State

17 BEVERLY DORINE JONES, ESQUIRE
18 Attorney for the Defendant

22 Linda D. Moffitt
23 Circuit Court Reporter

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No sworn testimony.

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 (Proceedings July 25, 2016)

2 MR. BULSA: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 MR. BULSA: State vs. David Ronald Boggs, III,
5 Indictment 2015-GS-42-2327. That's a 2-part indictment,
6 indictment for murder and possession of a weapon during the
7 commission of a violent crime.

8 He's pleading guilty to the lesser included offense of
9 voluntary manslaughter and also the gun violation.

10 He's represented by Ms. Jones.

11 THE COURT: You are David Ronald Boggs, III.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Ms. Jones is your lawyer.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You're charged in Indictment 2015-2327,
16 count one, with the crime of murder.

17 The state alleges on February the 9th of 2015 you did
18 wilfully and with malice aforethought kill Eddie Richards
19 by shooting him with a gun and he died as a proximate
20 result of that gunshot wound.

21 Count two of the indictment alleges you possessed a
22 weapon during the commission of a violent crime, and they
23 allege you, specifically, that you did visibly display a
24 firearm during the commission or attempted commission of a
25 violent crime, in this case that crime being murder.

1 If you're convicted of murder you could receive a
2 sentence of up to life in prison. If you're convicted of
3 count two, possession of a weapon during the commission of
4 a violent crime, you could receive an additional sentence
5 of five years in jail.

6 Do you understand what you're charged with?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you have indicated by your signature
9 on this document that you wish to enter a plea of guilty to
10 voluntary manslaughter.

11 Is that true?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And have you had plenty of time to talk
14 with Ms. Jones about that decision?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Did she explain to you what murder is?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Did she explain to you what voluntary
19 manslaughter is?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did she explain to you the difference
22 between the two?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did she explain to you what kind of
25 punishment or penalty could be imposed for voluntary

1 manslaughter?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: what do you understand the penalty can be?

4 THE DEFENDANT: Zero to 30.

5 THE COURT: And did you tell her everything you know
6 about the facts that relate to these allegations made
7 against you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And did you and she discuss whether or not
10 you have a defense to the charge of voluntary manslaughter?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have one?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And what is that defense?

15 THE DEFENDANT: Can you repeat the question?

16 THE COURT: I asked you if you had a defense to the
17 charge, and you said you did, so I asked you what that
18 defense is.

19 THE DEFENDANT: That Eddie Judson Richards has raped
20 me for years.

21 THE COURT: All right. And what do you perceive your
22 defense to be to this charge of homicide?

23 (Pause.)

24 THE COURT: what's the defense, Ms. Jones?

25 MS. JONES: Your Honor, the defense is a defense that

1 he suffers from the battered child syndrome and is also a
2 victim of rape trauma syndrome. That's what he suffers
3 from.

4 THE COURT: All right. Mr. Boggs, do you understand
5 that if you do have a defense to a criminal charge that
6 when you enter a plea of guilty to it you give up your
7 right to assert that defense?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: In other words, when you have a defense to
10 a criminal charge you can have a trial and present that
11 evidence before a jury, and a jury decides what the verdict
12 is.

13 But when you plead guilty to a criminal charge you
14 give up your right to assert a defense, which just simply
15 means that there's no chance that you'll be found not
16 guilty when you plead guilty to a crime.

17 Do you understand?

18 THE DEFENDANT: Uh-huh, yes, sir.

19 THE COURT: All right. Well, have you discussed that
20 fully with Ms. Jones?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you understand it.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And understanding it, that you're giving
25 up your right to assert any defense, do you wish to give

1 that right up and go forward and enter a plea of guilty to
2 voluntary manslaughter?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And Ms. Jones has explained to you what
5 would have to be proven before you could be convicted of
6 that offense by a jury?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you understand it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did she explain to you that voluntary
11 manslaughter, as is murder, is classified as a violent
12 offense under the law?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: It's also classified as a most serious
15 offense under the law.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And it's also classified as a no-parole
18 offense under the law.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand the significance of each
21 of those classifications?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You discussed those also fully with
24 Ms. Jones?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Did she explain to you each of the
2 constitutional rights that you have that you must give up
3 if you want to plead guilty to a criminal charge?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did she explain to you that you have a
6 right to remain silent?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And that of course means that you don't
9 have to say anything. You don't have to testify even
10 during a trial. You don't have to make a statement that
11 relates to the case. You don't have to answer any
12 questions that relate to the charge against you.

13 You don't have to answer my questions right now unless
14 you want to plead guilty, but if you want to plead guilty
15 you have to give up your right to remain silent because I
16 have these questions that I'm asking you in order to
17 determine whether or not your decision to plead guilty is
18 freely, voluntarily, knowingly and intelligently made and
19 that you understand the consequences of that decision.

20 Do understand your right to remain silent?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You discussed it with Ms. Jones?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you wish to give it up in order to
25 plead guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did Ms. Jones explain to you you also have
3 a right to confront and to examine any witness in court
4 that would offer evidence against you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that means that you have
7 a right to require the state to bring each of their
8 witnesses into court?

9 Any person that would offer testimony or other
10 evidence tending to prove you guilty of murder, or
11 manslaughter for that matter, would have to come to court,
12 take the witness stand and testify in your presence under
13 oath so you can see who they are, you could hear what they
14 have to say. And your lawyer would be able to examine
15 those witnesses on their testimony in order to test that
16 witness' credibility and the reliability of the information
17 they're providing.

18 Do you understand that when you plead guilty that
19 doesn't happen? The witnesses don't come to court; they
20 don't testify, they don't get examined in court.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand your right to confront
23 and to examine the witnesses?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And understanding that right, do you wish

1 to give it up in order to plead guilty?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did Ms. Jones also explain to you that you
4 have a right to have a jury trial and to have 12 jurors
5 determine if you're guilty or not?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do you understand that that means
8 you've got a right to pick 12 people that would sit in your
9 case?

10 They would consider all of the testimony and all of
11 the evidence introduced during the trial. They would
12 determine what they believe to be the facts as they relate
13 to the allegations made against you. They could consider
14 any evidence that you offer by way of a defense or
15 otherwise if you chose to testify or if you chose to call
16 other witnesses to testify.

17 The jury determines what the facts are, and then they
18 apply the law that I provide them, and they decide whether
19 or not you're guilty of any crime the state claims you
20 committed, or any lesser included offense.

21 But before a jury can find you guilty of anything all
22 12 jurors have to be convinced of your guilt as to that
23 charge beyond a reasonable doubt, and the burden is on the
24 state to convince the jury beyond a reasonable doubt of
25 your guilt. And that means that you don't have any burden

1 and you don't have to testify. You don't have to prove
2 anything.

3 You can testify if you want to, but you're not
4 required to. But even if you do testify, you have no
5 burden of proving anything. The state has to prove you
6 guilty beyond a reasonable doubt before a jury could find
7 you guilty of any crime.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And the jury's verdict has to be
11 unanimous. All of them must be in agreement.

12 Do you understand your right to have a jury trial?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you wish to give it up in order to
15 plead guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Other than the fact that they agreed to
18 reduce the charge have you been promised anything?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you been threatened by anybody in any
21 way?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you been pressured by anyone in any
24 fashion?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you pleading guilty of your own free
2 will and accord?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You made that decision?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you satisfied with that decision?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you need to discuss it with your lawyer
9 any further?

10 THE DEFENDANT: No, sir.

11 THE COURT: Do you have any questions you need to ask
12 me about it?

13 THE DEFENDANT: No, sir.

14 THE COURT: You wish for me to accept your plea of
15 guilty to voluntary manslaughter?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You're 19 years old?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: How far did you go in school?

20 THE DEFENDANT: Tenth grade.

21 THE COURT: why did you quit?

22 THE DEFENDANT: Got arrested.

23 THE COURT: For what?

24 THE DEFENDANT: Charged with murder.

25 THE COURT: This charge?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And so you've been in jail since that
3 time?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you ever been married?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you ever had a child?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you ever worked?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Where?

12 THE DEFENDANT: At a warehouse beside Spartanburg
13 Regional. I forget what it's called.

14 THE COURT: All right. Do you suffer from any type of
15 substance abuse or addiction?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you ever been treated for such?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you suffer from any type of mental
20 illness or emotional disturbance?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And have you ever been treated for such?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And is there anything about the condition
25 you have that in any way impairs your ability to fully

1 understand what you're doing here today?

2 THE DEFENDANT: No, sir.

3 THE COURT: You understand fully why you're here?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand fully the decision that
6 you've made?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you understand fully the consequence
9 of that decision?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Do you want to tell me some
12 facts?

13 MR. BULSA: Yes, sir.

14 THE COURT: Listen to what the solicitor tells me
15 about the facts.

16 MR. BULSA: Your Honor, on February the 9th of 2015
17 sheriff's officers were called to 1575 Wilkie Bridge Road.
18 That's a Chesnee address. I believe it's up near Little
19 Africa, a Spartanburg community.

20 Your Honor, they were called about 3:30 that
21 afternoon.

22 When they arrived they met with Roy Griffin. He's the
23 landowner there. There's a trailer located on that
24 property that had been added onto, and then out behind the
25 trailer was a separate out-type building that had been

1 transformed into a living quarters. And that's where the
2 victim was found in that outbuilding.

3 The victim was Eddie Richards. He was the -- he was
4 the cousin of Mr. Griffin. He had been staying at the
5 residence for a period of years, had recently moved into
6 that building.

7 In fact, it looks like it was still in the works of
8 getting finished. It was just wrapped in black plastic, no
9 exterior siding. Looks like they were trying to add on a
10 bathroom-type area inside.

11 He was found laying in his bed, clearly deceased when
12 the officers went in.

13 Autopsy revealed he was shot twice in the head at
14 close range with a shotgun. Shotgun wadding was recovered
15 from his skull area, as well as multiple pellets from the
16 shotgun blast.

17 Police began their investigation once they found the
18 victim. They talked with the people at the home.

19 We had Roy Griffin, his wife Donna Griffin, Roy's
20 stepson, the defendant, and Roy had a girlfriend by the
21 name of Doris Angus who was being allowed to live there and
22 share a room with Mr. Griffin in the house.

23 Police didn't know what to think at first. They
24 actually first thought it might be a suicide, but there was
25 no weapon found in the building.

1 They -- unfortunately, all four people were
2 sequestered in one vehicle together, and then they were
3 taken essentially one at a time away from the vehicle to be
4 interviewed.

5 When the defendant was interviewed he eventually broke
6 down and told them that he had actually -- that he had shot
7 Eddie, as he called him, shot him twice in the head.
8 Didn't go into great detail as to what he did, but he
9 testified about going to the room the night -- that night
10 before, which would have been early morning of the 9th, and
11 fired two rounds and then disposed of his clothing. He put
12 the shotgun back in the room where Roy and Donna lived.

13 The police asked him why, and he referenced some prior
14 sexual contact but told them that it was consensual.

15 In fact, on January the 7th Mr. Griffin -- excuse
16 me -- Mr. Boggs and his mother, Ms. Griffin, and Doris
17 Angus went to the sheriff's office to report some sexual
18 abuse.

19 When they sat down with Tony Brown, sergeant over that
20 part of the investigations, Sergeant Brown started asking
21 questions.

22 When Sergeant Brown learned that Mr. Boggs said any
23 contact did not occur until he was 16 years or older -- the
24 age of consent in South Carolina of course is 16 -- and
25 then he also said it was consensual.

1 In fact, he was benefiting from the sex because he
2 was -- he had gotten a cell phone, he was getting
3 marijuana, he was getting monies. So the police told him
4 there's nothing to investigate here.

5 Mr. Boggs told them, well, he's done this to another
6 relative, and Mr. Brown told them bring us some more
7 information, bring us another victim, we'll be happy to
8 look into it. They never heard anything for a month.
9 Police closed that case out.

10 Then five weeks after the -- actually four to five
11 weeks after reporting to the police department Mr. Boggs
12 takes it into his own hand and kills Mr. Pruitt.

13 I'm told by Mr. Pruitt's brother, Neddie, a twin
14 brother, said Mr. Pruitt suffered from seizures --

15 THE COURT: Richards.

16 MR. BULSA: That Mr. Richards suffered from seizures.

17 He had a condition where he could not use his right
18 arm very well, didn't have full strength of use in it. He
19 was on disability.

20 I learned recently that he had just recently suffered
21 a broken ankle prior to this incident.

22 All contact between the two parties was ceased
23 sometime in mid November. So I know the defense will go
24 into their defense in mitigation, but I guess I can
25 extrapolate on this some more tomorrow as far as sentencing

1 is concerned, but it's the state's position that
2 Mr. Richards was in no way a threat to Mr. Boggs and
3 Mr. Boggs killed him in cold blood. But the state does
4 understand the likelihood of the possible range of
5 convictions that a jury might hand down if that defense is
6 allowed before them.

7 I've discussed that with Neddie Richards, Eddie's
8 brother. Neddie is in agreement with the reduced plea, and
9 he'll speak tomorrow at the sentencing.

10 THE COURT: All right. Mr. Boggs, you heard what the
11 solicitor told me.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you think if your case went to trial
14 before a jury that you would help select that considering
15 that evidence that would be presented to the jury that
16 there's some significant probability that you'd be found
17 guilty of certainly manslaughter but perhaps even murder?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And based upon that belief and the fact
20 they've allowed you to plead guilty to the lesser offense
21 you prefer to enter a plea guilty to voluntary
22 manslaughter --

23 THE DEFENDANT: Yes, sir.

24 THE COURT: -- giving up your right to assert any
25 defense that you may have?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. I'll accept your plea of
3 guilty, and we'll defer the sentence until in the morning
4 at which time we'll have a hearing beginning at 9:30 in the
5 morning.

6 END OF PROCEEDINGS JULY 25, 2016

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1 (Proceedings July 26, 2016)

2 THE COURT: All right. We're back on the record with
3 the guilty plea of David Ronald Boggs, III.

4 Ms. Jones.

5 MS. JONES: Thank you, Your Honor.

6 Yesterday as part of our preliminary discussions with
7 the Court I presented the report of Dr. Lois Veronen who is
8 a psychologist from Rock Hill.

9 She's a professor at Winthrop College and for years
10 has been recognized in the courts of this state as an
11 expert in the syndrome suffered by battered spouses and
12 also rape victims.

13 She prepared a very lengthy and detailed report that I
14 submitted to the Court. Mr. Bulsa had had it for several
15 weeks or a week or two before, so he's aware of the
16 contents.

17 I won't go through that because I know Your Honor was
18 diligent in reading it.

19 THE COURT: Well, no. Let me be clear on one thing.

20 That -- you provided me your copy to look over, but if
21 you wish to submit it for consideration in this plea --

22 MS. JONES: Yes, sir.

23 THE COURT: -- it's got to be made a part of the
24 record.

25 MS. JONES: And I was to going to do that, Your Honor.

1 In referencing it, Your Honor, as I stated, it goes
2 into great detail about Mr. Boggs', my client's, social
3 history with the pertinent part of it being at the age of
4 14 and 15 he began to exhibit signs of depression and began
5 to engage in self mutilation.

6 It came to the attention of not only his parents but
7 school officials. Referrals were made to mental health,
8 and he undertook mental health counseling and medication.

9 Your Honor, he at that point in that same period of
10 time was living with his parents.

11 Let me back up. His father and his step-mother.
12 They're in the courtroom now, at the appropriate time will
13 speak briefly to the Court.

14 But my client is the product of a divorced household.
15 When he was about, oh, seven or eight, maybe nine, his
16 parents divorced, and at that time even during the
17 separation and then in the divorce decree the father was
18 given custody of the children. His mother's life was, it
19 appeared to be, in a great deal of disarray. She was
20 homeless a lot of the time.

21 Ultimately, to give the Court a little bit more
22 background into the future to where we are now, his mother,
23 Donna, remarried a gentleman, Roy Griffin, who is the
24 cousin of the decedent in this case.

25 She first lived with him, married and-but during the

1 course of their relationship lived in the home where this
2 event occurred.

3 Now, some years later we get to the point I have
4 spoken of where my client was experiencing distress, and he
5 indicated and the practitioners who were treating him
6 believed that a change of household might be helpful to
7 him.

8 At that point by virtue of his father's remarriage to
9 Dana Boggs there were about seven or eight other children
10 living in their home.

11 He -- at that point they describe a very introverted,
12 troubled young man who felt like he never had peace, he
13 never had privacy.

14 So it's kind of a consensus that at that age he should
15 be allowed to go live with his mother who lived only in the
16 home with her husband and his cousin, the decedent, who at
17 that time was living in the home.

18 Now, prior to that there were some weekend visits by
19 not only my client but his two teenage siblings, who are
20 also in the courtroom -- Amber and Ryan.

21 And during that time, as is set out in Dr. Veronen's
22 report based on extensive interviewing with my client, is
23 when -- prior to living there full time that is when
24 Mr. Boggs indicates that the victim began touching him
25 inappropriately. He was underage at the time.

1 He -- it began with casual touching while they're
2 playing games, video games, which was a past time that they
3 both engaged in, I think, up until about the time of the
4 death of the decedent.

5 But it progressed from just casual touching and
6 rubbing of a thigh to touching of the private parts.
7 Resistance -- it's my understanding that the victim would
8 offer to pay him to let him do that.

9 And through the course of my investigation of this and
10 interviewing other family members I -- that statement kind
11 of rang true, because I have been told by another relative
12 of the decedent -- and he was prepared to testify -- that
13 that was the same kind of behavior that the decedent
14 engaged in with him when he was younger and he believed
15 with others in the family.

16 Your Honor, the -- Mr. Boggs continued to live there.

17 The victim at some point, it's my understanding,
18 wanted more privacy himself, decided to erect or build or
19 have built this outbuilding type structure he lived in.

20 It was -- electricity was provided for by a line run
21 from the home. I think it had internet and cable. It had
22 no running water and was heated by a heat stove and electric
23 heaters.

24 By necessity, the victim had to go into the home for
25 the bathroom, showers. He also ate and used -- ate with

1 the family and used the kitchen in the house. So it's not
2 like he lived in a separate dwelling completely contained,
3 self contained, and had no interaction with the family.

4 There was a great deal of interaction.

5 As a matter of fact, as things progressed, I am told
6 by members of the household, that the mother commented and
7 argued often with not only her son but the victim, and also
8 at times her own husband, his stepfather, about how much
9 time he was spending outside and that she didn't like it.

10 The -- at times, I am told -- and it's not only by
11 Mr. Boggs, it's corroborated by others -- that if for one
12 reason or another she might ground him and that her
13 grounding would be you can't go out to Eddie's building.

14 And I am told that at times the victim would attempt
15 to barter to have him come, be allowed to have his
16 grounding restriction lifted and come out.

17 I'm told at times he offered the mother marijuana,
18 Klonopin that he received from a valid script.

19 She denies ever -- she acknowledges the bartering
20 process but denies that she ever took anything.

21 The -- so, Your Honor, this is a situation that when
22 the other two siblings that Mr. Boggs has -- Amber and
23 Ryan -- and they are the two -- Ryan is in the checked
24 shirt. Amber is in the floral dress. They all look alike.
25 I think you can probably tell.

1 They tell me when they would go over for their weekend
2 visitation it was an odd kind of atmosphere to go into. I
3 think, especially, Ryan at times was not comfortable there
4 because the mother was so permissive. There were no rules.

5 But I am told by people, by Mr. Boggs and also his
6 codefendant that I have been allowed to speak to by her
7 attorney, that during the weekend visitations the rules --
8 they were on their best behavior and even the loosey-goosey
9 type household that Ryan didn't really seem to like or
10 approve of -- and he didn't always visit regularly for that
11 reason -- had been tightened up because of their entrance
12 into the home, that it was different when no outsiders were
13 there.

14 Ultimately, in the last several months there was a
15 change in the dynamic of this home and it came, in my
16 opinion, in the form of this young lady, Doris Angus, the
17 codefendant. She is 18 or 19, like age to my client.

18 They were friends at school. He may have considered
19 themselves boyfriend-girlfriend even before she moved into
20 the home but they -- he found out that or she communicated
21 to him that her household was chaotic. I think she even
22 alleged some abuse.

23 But, in any event, she did -- she and my client ran
24 away in September. They left school one day, didn't get on
25 the school bus, and until well into the night nobody knew

1 where they were.

2 well, they finally -- Mr. Boggs finally called, you
3 know, said we need help, we don't have a way home or
4 whatever.

5 They were brought -- they were both brought to the
6 Griffin him, and he implored his mother and stepfather to
7 let Doris live there.

8 There was some discussions and even arguments with her
9 parents over the next few days about whether that would be
10 allowed to happen. But, ultimately, Donna said, oh, why
11 not.

12 So she lets this 18-year-old move into the home and
13 they pretty much take up as a couple. They live in a room
14 together. They become sexually active.

15 And at that point this whole dynamic that's going on
16 in this home, I think, changed because the allegiance he
17 had had, or whatever word you want to put on it, in the
18 relationship with Eddie was -- was changed and confronted
19 and his -- psychologically he was confronted with, you
20 know, what had been one master. He's now got this person,
21 and also he realizes I have emotional, romantic feelings
22 for this other young lady.

23 She did not -- she became aware of the sexual
24 relationship with Eddie and she didn't like it.

25 There -- early into living there I think there was at

1 least one, maybe more than one, encounter that involved all
2 three of them. I'm not sure it was all three at the same
3 time. It might have been him with her, and then him with
4 the other guy, and-but it's apparent that early on Doris
5 did not like the idea that this person she thought was her
6 boyfriend was also engaged in some other relationship. And
7 so she began to pressure him why are you going down there,
8 why does he have this hold on you, why don't you quit.

9 She also began to pressure the mother, Donna, why are
10 you letting him live here, don't you see, you know what
11 he's doing, why don't you do something about it.

12 That's from October, November, December. And also in
13 November and December an event occurred where Ryan went
14 home.

15 They're still doing their weekly visitation, Ryan not
16 as regular. But after one of his occasional weekend visits
17 he went home and told his dad we don't need to be going
18 back there, you need to quit letting Amber go because while
19 they were there they were being allowed to drink, being
20 allowed to smoke marijuana with their mother.

21 And so the father is, like, good grief. And he pulls
22 the kids out, and you're never going back. And to my
23 knowledge I don't think Amber and Ryan had any contact at
24 all with their mother since then. And I think at that
25 point in the last few months is when everybody started

1 paying attention to this.

2 January the police report was made. Now, I think
3 everybody handled that whole situation wrong. You know,
4 it's my understanding when they go there instead of
5 somebody just interviewing him, he says, oh, yeah, it's
6 been going on for two years. Well, if you did the math
7 that backs you right up to the age of consent.

8 The way we handle these case is -- is the reason why
9 CAC's is there. I mean, if it looks like something's that
10 close to the age of majority -- we all have these cases --
11 they send them to somebody that knows how to interview them
12 just like Dr. Veronen.

13 But that didn't happen I think partially because of
14 the -- and mainly because of the approach of the Donna
15 Griffin and Mr. Boggs and what they told, you know. That
16 situation if handled differently from both sides could have
17 been the end of the whole thing, but it didn't. An
18 opportunity was missed.

19 Now, Your Honor, Mr. Boggs doesn't have a criminal
20 history.

21 I'll ask his mother and stepfather in a moment to come
22 and speak, but I think this behavior is such an aberration
23 for them, because the kids and all of the adults if asked
24 to describe his personality pretty much would all say he's
25 a passivist, he's a passive personality, he's not

1 aggressive.

2 He doesn't shirk his responsibility. He spent a good
3 bit of time talking to me and those working on the case
4 with me about what other people in the home did, but he's
5 never advanced the theory that I didn't do this. He's --
6 and he has always told me honestly who else was involved in
7 the situation.

8 A gun was purchased by his stepfather, what, ten days
9 before this thing happened. It might not even have been
10 ten days. Around the same time his mother went and bought
11 the shot -- the ammunition that ultimately was used to kill
12 Mr. Richards. It was birdshot.

13 There's been a lot of discussion about what -- the
14 reason they advanced, needing the gun was. I've heard
15 everything from we were going to go deer hunting, is what
16 the stepfather said. Well, you know, it's February. You
17 don't go deer hunting. You also don't go deer hunting with
18 birdshot.

19 There's no history of hunting in this household. It's
20 the same as -- this is the same man who the police --
21 admitted to the police had them -- had a discussion with
22 these kids in the car while the police are walking through
23 his yard putting crime team -- crime scene tape up.

24 Okay. Now, if they ask you about the gun tell them
25 this. If they ask about this, say this. It's unfortunate

1 here.

2 The -- psychologically without repeating Dr. Veronen's
3 report, the fact -- you know, the people who either don't
4 buy into her theory or don't understand that syndrome will
5 say, well, why didn't he just tell somebody, why didn't he
6 tell the police more clearly, why didn't he tell his daddy
7 something was wrong, why didn't he tell Ryan and Amber on
8 the weekend look at the horrible things they're doing to me
9 let me go home.

10 Well, as Your Honor knows from the report and even
11 before the report the secrecy in nondisclosure is very
12 common, almost part of the pattern.

13 The -- Mr. Boggs has told me, just like he told the
14 detective, one of the detectives at the very end -- I
15 believe it was his second recorded interview -- they said
16 is there anything else you want to say that you haven't
17 told us so far. I just -- and he's been crying through the
18 whole interview, both of them. And while they take
19 pictures of the bruise he had on his shoulder from holding
20 the gun. He says I just regret this thing has happened,
21 I'm going to regret this for the rest of my life.

22 Your Honor, the -- and I'll be delicate when I say
23 this because I don't want to offend anybody. It's not my
24 job to attack the character of the victim, but I don't want
25 the Court to be left with the impression that this man was

1 so physically handicapped that he was unable to get around
2 and offered no threat to this young man.

3 I mean, he engaged in physical activity. He worked
4 daily with a paint company that's owned by the family. Roy
5 Griffin's father owns the company that employs multiple
6 family members. I mean, he moved about.

7 well, I think -- I'm told by some of the other kids
8 that he did walk with a limp. He didn't have full strength
9 on one side. But he was not someone who was so vulnerable
10 that -- that he offered no threat to Mr. Boggs.

11 Aside from whatever physical threat he was, obviously,
12 as Dr. Veronen said, he represented a huge psychological
13 threat to him.

14 The -- Your Honor, if Your Honor thinks this is the
15 appropriate time, I'd ask the father and the step-mother
16 individually to step up.

17 THE COURT: Okay. May I see that report? Has it been
18 submitted?

19 MS. JONES: No. I'll do that now. Thank you.

20 (Report of Dr. Lois J. Veronen marked Court's Exhibit
21 No. 1.)

22 THE COURT: Okay.

23 MS. JONES: Your Honor, this is my client's father,
24 David Boggs.

25 Go ahead, Mr. Boggs. Tell the Court what you would

1 like to tell them about your son.

2 DAVID BOGGS, II: Okay. David was a very fun-loving,
3 life-loving child even through the divorce going up to
4 about the age of 13 or 14.

5 Even with the time he spent with his mother for a few
6 years he fully enjoyed his time coming to our home and
7 seeing his other siblings, his step-siblings, his
8 half-siblings. He has two much younger half-siblings.
9 They're the age of six -- five and six now, that he's even
10 drew pictures from jail and they draw them to him. He
11 sends them post cards.

12 David through the age, I would even say up before the
13 incident, I never saw a violent side of David at all. Very
14 much an animal lover, not even fights with his biological
15 brother growing up, which is typical with siblings a lot.
16 Not even that.

17 When I divorced his mother at the age of nine I tried
18 to find a delicate way to tell the kids that that was over
19 and that was going to change.

20 When I approached him with it, he said great, and, you
21 know, I'm puzzled. I said it's not bothering you. He said
22 I can't -- he said I'm tired of you guys fighting, I can't
23 live like that. Always a peace lover.

24 For me and his step-mom, a very good kid. We -- we
25 very seldom had to discipline him, you know, maybe to clean

1 his room after a third or fourth attempt. That was like
2 the worst we had ought out of him.

3 That situation came. He felt like he was a small fish
4 in a big pond and needed some privacy and needed his own
5 space. That's where the decision came from to let him live
6 with his mother.

7 I was assured he would be taken to counseling, therapy
8 and whatever type, whatever they would tell him he would
9 have to do, whether it be medication or therapy or
10 whatever, would be followed up on.

11 Over the next two years from there it became very hard
12 for me to stay in communication with him as I would be
13 getting excuses that his phone was actually owned by Eddie
14 or that he just wasn't available.

15 His visits became further and farther -- fewer and
16 farther between up until right beforehand. He'd become
17 somewhat very different from the David we knew.

18 And I -- I really want all of this to be taken into
19 consideration that the David that I raised and the David
20 that his mother finished raising, something really tragic
21 happened to him for that drastic of a change.

22 And I can honestly stand here and say that outside of
23 that home he lived in last anyone that knew him --
24 grandparents, cousins, all of his siblings -- everyone
25 loved this kid. He was never a pain to anyone.

1 MS. JONES: Thank you.

2 This is Dana Boggs, his step-mother. Go ahead.

3 DANA BOGGS: Same as his father. The Davey that -- I
4 call him Davey against his wishes -- that lived in our home
5 is very different from the Davey that lived in her home, in
6 his mother's home.

7 The summer before he went to stay with his mother we
8 did a beach vacation, and this is a boy who carried his
9 little baby sister all the way down to the beach, and his
10 arms were so tired and he didn't even ask for someone else
11 to take her -- from her.

12 He's -- he's very -- in our home he was so passive.
13 To -- to imagine that he even did this is incomprehensible
14 to me, because in our home he was the one that would give
15 the siblings their way. You know, he wouldn't even argue
16 with them. He would be like you want to listen to that
17 radio station, listen to that radio station, I don't care.

18 Very passive child to the point that I would even say,
19 you know, maybe, you know, it's okay for you to want
20 something, you know, stand up for yourself. You know, that
21 passive.

22 When he went to stay with his mother his visits
23 became, like his father said, less and less. Contact
24 became less and less.

25 And I -- I so wish I could go back in time. He's a

1 good boy who made a very made decision one night. I just
2 want y'all to take that into consideration, that he has
3 psychological damage. It's not -- this isn't who he is.
4 He's not the act that he did. He's a boy. And I guess
5 that's it.

6 MS. JONES: Thank you.

7 Your Honor, they're not going to speak, but I do want
8 to recognize if I can step out of the way some other
9 people.

10 On the end is Hanna McCall. That's his step-sister.
11 His grandparents, David and Hazel Boggs. They're the
12 parents of his father David. His sister Amber and then his
13 brother Ryan.

14 Your Honor, one thing I did want to show. I don't
15 know if Mr. Bulsa was going to use it during trial. I want
16 to offer this to Your Honor to show what Mr. Boggs looked
17 like when he was booked in.

18 He had -- there's some reference, I think, in that, in
19 Dr. Veronen's report, to -- maybe not -- but he had adopted
20 around the time or at the time that he lived with his mom
21 this Goth style or Gothic style where he was painting his
22 fingernails, toenails. He wore eyeliner. He dyed his
23 hair.

24 He was really kind of unrecognizable, and I hate to
25 say this because it will probably embarrass him, but

1 someone I heard within the system referred to his booking
2 picture as he looks like a really ugly woman. They didn't
3 even realize he was a male when they first saw his booking
4 photograph. But that's only the head shot.

5 They took pictures of him at the sheriff's office
6 after interviewing him where he was wearing fingernail
7 polish -- toenail -- black fingernail polish, toenail
8 polish.

9 I don't know that he had eyeliner on in the picture.
10 He had been crying so much it wouldn't have been there
11 anyway but/and he had the long dyed hair.

12 I think that's just an outward indication of how
13 different a person he had -- a different persona he had
14 adopted at that point.

15 Your Honor, at this point I'll ask Your Honor to be
16 merciful, take into account the documented problems that
17 Mr. Boggs has, psychological issues he's got to overcome.

18 He is very remorseful. He is not speaking to the
19 judge, I think, just out of nerves and fear that he won't
20 be able to say anything to Your Honor.

21 And I'll just end it this way, Your Honor, by
22 saying -- and I'm not going to identify the person -- but
23 at one point when I -- after I knew all of the facts of
24 this case I had a conversation with one of the
25 investigators that worked on this case.

1 And I said -- at that point I had received no offer
2 and had been told there wasn't going to be an offer, and I
3 said I don't understand this, don't you really understand,
4 I mean, you see that there was a whole lot more going on,
5 because one of them in interviewing him said who are you
6 hiding, are you sure you're not covering up for somebody,
7 who else was, or something along those lines, that you're
8 covering for somebody, you're hiding something for someone
9 else in this, aren't you.

10 And I -- I said I just don't see it. This -- this
11 seems like this ought to be a manslaughter. And one of the
12 investigators said, yeah, I don't get it either, it seems
13 like a classic manslaughter case to me. So I was glad.
14 And I appreciate the willingness of the solicitor to get us
15 to this point.

16 But, Your Honor, I would ask you to factor in
17 everything that I've said and those items I've offered in
18 crafting as merciful of a sentence as you think you can for
19 Mr. Boggs.

20 THE COURT: Ms. Jones, this report that was prepared
21 by Dr. Veronen --

22 MS. JONES: Yes, sir.

23 THE COURT: -- do I understand that Mr. Boggs has been
24 examined for competency?

25 MS. JONES: Yes, sir. Well, Dr. -- and Dr. -- I've

1 got another report. I can offer it into the record.

2 Dr. -- hand it -- Dr. Schwartz-Watts.

3 THE COURT: You've seen this, Mr. Bulsa?

4 MR. BULSA: Yeah. In fact, I was going to offer one
5 into evidence myself.

6 (Report of Dr. Donna Schwartz-Watts marked Court's
7 Exhibit No. 2.)

8 THE COURT: So he was examined for competency and
9 that's not an issue?

10 MS. JONES: That is not an issue, Your Honor.

11 THE COURT: He was also examined for criminal
12 responsibility.

13 MS. JONES: Yes, sir. He was.

14 THE COURT: And that's not an issue?

15 MS. JONES: No, sir. On page four she offers the
16 opinion that due to his P.T.S.D., borderline personality,
17 he's unable to conform his conduct to the requirements of
18 the law.

19 THE COURT: well, is this a guilty plea but mentally
20 ill?

21 MS. JONES: well, yes, sir, technically. The nature
22 of it is that. I understand practically for sentencing
23 purposes it doesn't make any difference, but yes.

24 THE COURT: But you've discussed with your client
25 about the plea of guilty but mentally ill?

1 MS. JONES: Yes, sir. He does understand the opinion
2 of the doctor is that he suffers from a disease or de -- or
3 a syndrome that keeps him from conforming his behavior to
4 the requirements of the law. We have discussed that.

5 THE COURT: Is that true, Mr. Boggs?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You've discussed the guilty but mentally
8 ill plea with Ms. Jones?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And that's what you wish to do here
11 yesterday and today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: To enter a plea of guilty to voluntary
14 manslaughter but mentally ill?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Ms. Jones, the sexual contact with
17 Mr. Richards and Mr. Boggs first occurred at what age?

18 MS. JONES: Fifteen. Well, it's 14 or 15. But,
19 either way, it was before majority or legality.

20 THE COURT: And how many occasions are we talking
21 about from 14 or 15 until he turned 16?

22 MS. JONES: It's my understanding with his --

23 THE COURT: What was the frequency of their
24 relationship?

25 MS. JONES: Well, it depended on the privacy,

1 obviously, and opportunity. As Your Honor knows, all of
2 these cases do.

3 That's why in -- in preparing the case I often with
4 people present in the home had to find out who -- who was
5 staying in what room.

6 He indicates to me that what would happen when he was
7 first coming for the weekend, they would play video games.

8 Mr. Richards had his own bedroom. They would
9 either -- he would have him either in his bedroom or
10 sometimes even touch him when others were asleep.

11 I think it happened as often as Mr. Richards could
12 make an opportunity for it and Mr. Boggs didn't object. At
13 first he objected. And as with the grooming of any abuser,
14 just it wears down his objection.

15 Eventually, the money was interjected into it and it
16 got to be a I'll give you \$20 if you let me do this.
17 Alcohol, marijuana. So it was -- it was very frequent
18 underage.

19 After -- it was after the other folks would be asleep
20 and generally in the setting of them playing video games.
21 And that is actually corroborated by, like I said, another
22 witness I was going to have who suffered the same type of
23 behavior at the hands of Mr. Richards.

24 And one of Mr. Boggs' siblings who is here -- Ryan --
25 indicated at one point he -- there was an overture made to

1 him and he quickly stopped it and left.

2 THE COURT: Is there any indication in the evidence --
3 while, obviously, it's inappropriate, was there ever any
4 evidence of forced or coerced, physically coerced or
5 forced, sexual contact between the two?

6 MS. JONES: I am not aware of physically coerced.

7 THE COURT: And when was the last sexual contact they
8 had prior to the event in question here, which was prior to
9 February the 9th of 2015? When was the last contact
10 Mr. Richards and Mr. Boggs had?

11 MS. JONES: It's my understanding it would be in
12 December.

13 That is, I think, referred to in Dr. Veronen's report
14 as the incident that the girlfriend saw and became upset,
15 very upset, about.

16 THE COURT: And that was in December of two thousand
17 and --

18 MS. JONES: '14.

19 THE COURT: '14. And after that date they weren't
20 living in the same household and didn't have any further
21 contact?

22 MS. JONES: No. They continued to be in the same
23 household, but the contact between them had -- that and
24 then the report to the sheriff's office within a week of
25 that event kind of broke them apart.

1 I think he was staying in his building hardly coming
2 out and interacting and they were -- he and the girlfriend
3 were both staying in the house and trying to stay away.

4 There -- there is some indication this would have been
5 something I would have had witnesses testify to that -- and
6 it seems kind of petty when you say the dog was an
7 involvement, but there was a -- there is a dog that I
8 believe -- a tick hound that barks constantly that they
9 have at that time and if you -- watched any of the videos
10 involved in this you always hear the dog barking.

11 But I am told by the codefendant that at times she
12 felt like Mr. Richards was antagonizing the dog that was
13 always chained outside closer to his building than the
14 house during that -- that separated time in an attempt to
15 get him to come down there to have to deal with the dog,
16 because he was very -- he was very protective. It was his
17 dog.

18 Now, whether that's just the 19-year-old mind working
19 and assuming, but that was an opinion she held.

20 THE COURT: Do y'all wish to amend this sentencing
21 sheet to a plea of guilty but mentally ill --

22 MS. JONES: Yes, sir.

23 THE COURT: And you have -- you can talk to the
24 defendant about having the initials changed.

25 (Pause.)

1 THE COURT: All right. Mr. Boggs, do you have
2 anything you'd like to add to what your lawyer has told me?

3 THE DEFENDANT: No, sir.

4 THE COURT: You say no, sir?

5 THE DEFENDANT: I said no, sir.

6 THE COURT: Okay. Mr. Bulsa, anything further?

7 MR. BULSA: Yes, sir.

8 I would like to point out a couple of things and then
9 ask Mr. Richards' brother to come and speak.

10 Your Honor has both reports. My reading of
11 Ms. Veronen's report -- I reference page four at the end --
12 is apparently when the relationship went south.

13 At the very end, last paragraph, apparently the
14 defendant was describing for Ms. Veronen about sex between
15 David and the victim in Doris' presence, and the victim did
16 something to the defendant. And then Doris abruptly left
17 the building and David went after her.

18 And she says David had a difficult time understanding
19 why Doris was upset. That's the first line on page five.

20 In that same paragraph she references, "David began to
21 feel he'd been manipulated and used by David."

22 And then page six references how his anxiety
23 increased, became confused and more fearful.

24 Apparently, the morning after that incident, according
25 to David, and he Doris, in essence, told his mother what

1 had been going on, and then that led to the interview with
2 the police.

3 Your Honor, all of those actions were when he was
4 after the age of consent. It's kind of hard to believe
5 that he didn't understand what was going on.

6 We would have argued to the jury that he was the one
7 doing the manipulating because he was gaining money and
8 drugs for the actions.

9 But the main thing I want to point out is in Ms.
10 Veronen's report the defendant describes how this sexual
11 contact began, doesn't give an age range except stating at
12 the end of his eighth grade, says it began when they were
13 playing video games and that Eddie was grooming the
14 defendant for sexual contact and he began to touch him on
15 the inside of his leg. Eddie basically offered to give him
16 some money if he would let Eddie play with David.

17 That's how he describes to Ms. Veronen in her
18 interviews which were -- according to her report she
19 interviewed him on three separate occasions -- May 18th,
20 2016; June 1st, 2016; and June 30th, 2016.

21 However, when he was interviewed by Ms. -- excuse me
22 -- Dr. Schwartz-Watts on March 19th of 2016 she describes
23 on page one in the pertinent statements, developmental
24 history, that the defendant told her that he was sexually
25 abused by the victim from ages 14 to 17.

1 He reports -- then talks about his cousin also being
2 molested. He reports the victim would molest him when he
3 was asleep. He stated he would wake up with the victim
4 touching him and then woke up when the victim penetrated
5 him.

6 He reports he told his mother and she wanted to keep
7 it a secret. He reported that she told her husband, Roy,
8 and he reports that they hit each other, two completely
9 different versions of how this supposedly started and how
10 the information was basically told to a parent figure.

11 According to Dr. Schwartz-Watts' report, the mother
12 knew all along what was going on and it happened in an
13 unconsensual fashion, a forceful fashion. But Dr. Veronen
14 who's giving this opinion does not describe that and
15 describes something completely different.

16 Your Honor, we -- we believe this whole defense is a
17 sham, but, be that as it may, we have agreed to let him
18 plead to voluntary manslaughter.

19 Mr. Richards, would you come up?

20 We think he's got the benefit by getting it reduced
21 from murder to manslaughter and he deserves the maximum
22 sentence.

23 NEDDIE RICHARDS: Your Honor, I'm Neddie Richards.
24 I'm Eddie Richards' brother. I am his twin and his only
25 brother, his only biological kin.

1 Eddie started out his life with the misfortune of
2 seizures. Even, you know, straight out we were born
3 premature, seven months. And Eddie had the misfortune of
4 having seizures his whole life.

5 He had to go to Shriners to get help with his right
6 side to be able to use it.

7 And for the better half of his life through school I
8 had to pretty much defend him his whole life.

9 Fortunately -- unfortunately, Eddie -- he was
10 misunderstood most of his life, and people found that to be
11 a target, a way to make fun of people. And I'd have to say
12 that I'd have to fight his battles. And as like today, I'm
13 here to fight his battle.

14 You know, Eddie -- he was a big teddy bear. I mean,
15 he -- he had a big heart and he enjoyed helping a lot of
16 people.

17 And right before his death he was gearing up, saving
18 money, so that he could go down to Clearwater, Florida, so
19 that he could tell his story and tell how he had -- his
20 life -- pretty much how, you know, his disability is.

21 And I don't know if you are familiar with Clearwater,
22 but it was where "Dolphin Tale" was made for winter, which
23 was handicapped as well. And he wanted to go down there
24 and tell his story and how he -- even though he was
25 handicapped he -- he was able to manage and be a part of

1 society and, you know, have a life.

2 And, unfortunately, he wasn't able to make that
3 appointment. Fortunately, I did make that appointment for
4 him in September -- in September shortly after his passing.

5 Eddie -- like I said, he was mis -- misunderstood. He
6 was a child at heart pretty much.

7 He enjoyed video games. A lot of times we played
8 video games together and he just -- Eddie wasn't -- Eddie
9 wasn't the -- he wasn't fully there as far as the man that
10 I am.

11 And I ask that the courts please, please look at it
12 and -- and I ask that the courts give him the max because
13 Eddie -- Eddie -- he wasn't the full man that he should
14 have been and he -- I'm sorry. That's all.

15 THE COURT: Okay. Thank you.

16 MR. BULSA: Nothing further.

17 THE COURT: All right. On Indictment 2015-2327, count
18 one, indictment for murder, wherein the defendant has pled
19 guilty but mentally ill to voluntary manslaughter, the
20 sentence of the Court is you, David Ronald Boggs, III, be
21 confined to the South Carolina Department of Corrections
22 for a period of 25 years.

23 Indictment 2015-2327, count two, possession of a
24 firearm during the commission of a violent crime, five
25 years.

1 Give him credit for any time he's entitled to pursuant
2 to 24-13-40.

3 (Photograph marked Court's Exhibit No. 3.)

4 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 25th and 26th days of July 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 16, 2020

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Spartanburg)

David Boggs 369103)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2017-CP-42-2489

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 JUL 21 AM 10:33
M. HOPE BLACKLER

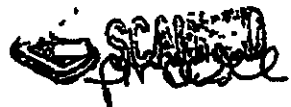
INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Spartanburg County Detention Center
2. Name and location of Court which imposed sentence Court of General Sessions, Spartanburg
3. Name(s) of co-defendant(s) (if any) Doris Marie Angus and Emmanuel Roy Griffin
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Manslaughter 2015GS4202327
 - (b) Weapon Possession 2015GS4202327A



(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Man slaughter; July 26, 2016; 25 years

(b) Weapon possession; July 26, 2016; 5 years

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

no.

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I didn't have an attorney to help me appeal.

(b) _____

F. F. F. CLERK OF COURT SPARTANBURG COUNTY 2017 JUL 21 AM 10:33 M. HOPE BLACKLEY

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Inaffetive Counseling
- (b) " "
- (c) " "

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Attorney had advised me to plea guilty.
- (b) Attorney did not fully explain what I agreed to.
- (c) I was in court for less than an hour.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2017 JUL 21 AM 10:33
 M. HOPE BLACKLEY

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2017 JUL 21 AM 10:34
 M. HOPE BLACKLEY

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Dexterly Jones
- (b) your trial, if any? _____
- (c) your sentencing? Dexterly Jones
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Dexterly Jones, Spartanburg Public Defenders Office
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment & plea & sentencing
 - ii. _____
 - iii. _____

CLERK OF COURT
 SPARTANBURG COUNTY
 2017 JUL 21 AM 10:36
 M. HOPE BLACKLEY

19. State clearly the relief you seek in filing this application:

I am seeking a shorter sentence.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
County of Spartanburg)

VERIFICATION

I, David Ronald Boggs, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David Boggs

SWORN to and subscribed before me this 18th day of July

Tamara Conwell (L.S.)
Notary Public

My Commission Expires: September 25, 2008

CLERK OF COURT
SPARTANBURG COUNTY
2017 JUL 21 AM 10:34
M. HOPE BLACKLEY

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

1. David Boggs, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

David Boggs
Applicant

SWORN or affirmed to and subscribed before me this

18~~th~~ day of July, 2017.

Tamara Conwell
Notary Public

My Commission Expires

My Commission Expires: September 25, 2022

2017 JUL 21 AM 08 09
M. HOPE BLACKLEY
CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
 David Boggs, SCDC #369103)
)
 Applicant,)
)
 v.)
)
 State of South Carolina)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT
)
 CASE NO. 2017-CP-42-2489
)
RETURN AND MOTION FOR
A MORE DEFINITE STATEMENT

2022 DEC 16 PM 3:51
 U.S. District Court
 for the Middle District
 of South Carolina
 111 W. CO.

D-111

NOW COMES Respondent, the State of South Carolina, making its Return to Applicant David Boggs's July 21, 2017 application for post-conviction relief. Respondent would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted in the May session of the Spartanburg County Grand Jury on one count of Murder and one count of Possession of a Weapon during a Violent Crime. (2015-GS-42-02327). The honorable J. Derham Cole presided over the case. Applicant was represented by Beverly Jones, Esq., and Deputy Solicitor Derrick Balsa of the Seventh Circuitry Solicitor's Office prosecuted the case. On July 25, 2016 Applicant accepted a plea offer to the charge of Possession of a Weapon during a Violent Crime as well as the lesser included offense of Voluntary Manslaughter. The plea was made without negotiations or recommendation by the State. Applicant was sentenced to 25 years imprisonment. Applicant did not appeal his plea or sentence.

Applicant filed an application for post-conviction relief on July 21, 2017. For reasons unknown to Respondent, Applicant's application was not delivered to Respondent until July 24, 2020.

II. FACTUAL HISTORY

On the afternoon of February 9, 2015, Sheriff's officers were called to a residential address on Wilkie Bridge Road in Chesnee. (Tr. 15, 16 – Tr. 16, 2). Upon arrival, officers met with the property owner, Roy Griffin, who directed them to a building near the rear of the property that was being used as living quarters. (Tr. 15, 23 – Tr. 16, 2). Officers entered the small building and discovered the body of Eddie Richards. (Tr. 16, 1-3). Richards was lying in his bed, having been shot twice in the head at close range with a shotgun. (Tr. 16, 11-14).

The officers began their investigation by sequestering everyone at the scene in a vehicle and questioning them individually. (Tr. 17, 1-4). Applicant, Roy Griffin's stepson, was present at the scene, broke down, and confessed to shooting Richards. (Tr. 17, 5-7). Applicant stated that he went into the room where Richards was sleeping early the previous morning, fired two rounds, disposed of his clothing, and placed the shotgun in Roy Griffin's bedroom. (Tr. 17, 7-12). When asked why, Applicant mentioned some prior sexual contact between himself and Richards, but claimed it was consensual. (Tr. 17, 13-14).

Applicant went with his mother to the sheriff's office to report sexual abuse a month before the shooting. (Tr. 17, 15-18). While speaking with Sergeant Tony Brown, Applicant stated that the alleged abuse had not occurred until he was over the age of consent and that it was consensual. (Tr. 17, 22-25). Applicant explained that he had been receiving gifts in exchange for the sexual contact, and was aware of other victims. (Tr. 18, 1-8). Sergeant Brown told Applicant to bring more evidence and the allegations would be investigated further. (Tr. 18, 5-9). The sheriff's office did not hear back from Applicant until the date of the shooting, four weeks later. (Tr. 18, 10-12).

III. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons (verbatim):

- I. "Ineffective counseling"
 - a. "Attorney had advised me to plea guilty."
 - b. "Attorney did not fully explain what I agreed to."
 - c. "I was in court for less than an hour."

Applicant requests relief as follows (verbatim):

- "I am seeking a shorter sentence."

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, transcript from Applicant's plea and sentencing hearing, and the current application for post-conviction relief. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

RETURN TO: CLERK OF COURT
 SPARTANBURG COUNTY
 11 W. COX
 SPARTANBURG, SC 29303
 2020 APR 16 PM 3:58
 FILED

IV. RESPONSE TO IMPROPER REQUEST FOR RELIEF

In his prayer for relief, Applicant states that he is seeking a shorter sentence. This relief is unavailable in a post-conviction relief action.¹ If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original indictments. *Gilstrap v. State*, 252 S.C. 625, 168 S.E.2d 88 (1969); See also *Grant v. MacDougall*, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964) (relief of absolute release not available); *Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (no constitutional right to plea bargain). Where an applicant seeks only relief to which he or she is not entitled, "it is not incumbent upon [the] court to pass upon what relief, if any, he might, perchance, be entitled to," *Young v. State*, 250 S.C. 476, 479, 158 S.E.2d

¹ Notwithstanding *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009) (where counsel failed to communicate a plea offer, remanding for a new sentencing hearing with the limitation that any new sentence imposed cannot exceed the original sentence, with emphasis upon consideration of the prior plea offer). Applicant is not entirely clear as to whether Counsel failed to communicate the plea offer, failed to advise him on it after communicating it to him, or failed in some other fashion. Nonetheless, a plain time cut is not available.

764, 765 (1968). For these reasons, if the application is not otherwise amended before the evidentiary hearing to reflect a desire for appropriate relief, Respondent would respectfully request this Court engage in a *thorough* colloquy with Applicant to apprise him of the relief available in PCR. If at the evidentiary hearing Applicant indicates no desire in appropriate relief but a desire to proceed, Respondent will at that time move to dismiss the application.

V. MOTION FOR A MORE DEFINITE STATEMENT

Respondent moves for a more definite statement as to Applicant's allegations. Applicant fails to set forth with specificity the facts and circumstances upon which his claims are based. Applicant merely alleges that his attorney advised him to plead guilty, failed to fully explain the agreement, and that he was only in court for a brief period of time. There is not enough information provided in the application to permit Respondent to adequately address and respond to each of these allegations.

The Uniform Post-Conviction Procedure Act requires that the Applicant must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976) (emphasis added). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Courdes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include a "short and plain statement of the facts showing that the pleader is entitled to relief."

Applicant has failed to state with any specificity the specific facts giving rise to his claims. Additionally, his claims are not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended or supplemental application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended or supplemental application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

VI. OTHER ALLEGATIONS DENIED

Each and every other allegation in Applicant's PCR application not explicitly admitted, qualified, or explained in this Return is hereby denied by the Respondent.

VII. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity. Rule 11(e), SCRPC and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

FILED
CLERK OF COURT
JUL 11 2016
COURT HOUSE
COLUMBIA, SOUTH CAROLINA

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rule 15(a)-(b), SCRPC (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

VIII. CONCLUSION

WHEREFORE, Respondent respectfully requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant’s allegations.

[Signature page follows]

Respectfully submitted.

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

WILLIAM H. RAY
Assistant Attorney General

By: /s/ William H. Ray
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

RECEIVED
JANUARY 16 PM 3:55
CLERK OF COURT
JANUARY COUNTY
MY 14, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL
	)	CIRCUIT
David Boggs, #369103)	
	)	Case No.: 2017-CP-42-2489
Applicant,)	
)	
v.	)	Certificate of Service
)	
State of South Carolina)	
)	
Respondent,)	
_____)	

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020), "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the **Return and Motion for More Definite Statement** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Rodney W. Richey, Esquire
richeyandrichey@yahoo.com

DATED this 13th Day of October, 2020.

/s/ William H. Ray
 William H. Ray
 Assistant Attorney General
 Office of the Attorney General
 Post Office Box 11549
 Columbia, SC 29211
 (803) 734-3737
WilliamRay@scag.gov

2020
 SEP 16 PM 3:55
 FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 S.C.



ALAN WILSON
ATTORNEY GENERAL

October 13, 2020

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
Post Office Box 3483
Spartanburg, South Carolina 29304-3483

RECEIVED
OCT 16 PM 3:55
CLERK OF COURT
SPARTANBURG COUNTY
ALAN WILSON

Re: David Bogg, #369103 v. State of South Carolina
2017-CP-42-2489

Dear Ms. Cox:

Enclosed please find the original **Return and Motion for a More Definite Statement** in the above-captioned case for filing in your office.

Sincerely,

/s/ William H. Ray
William H. Ray
Assistant Attorney General

WHR/cc
Enclosures

cc: Rodney W. Richey, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMONS PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

MAY 28 PM 2:24
CLERK OF COURT
COURT HOUSE
SPARTANBURG, SC

David Boggs,)
S.C.D.C. No: 369103)
Applicant,)

Case No: 2017-CP-42-2489

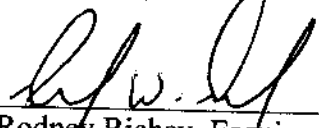
**AMENDED
POST-CONVICTION RELIEF APPLICATION**

vs.)
State of South Carolina)
Respondent.)

The Applicant, David Boggs, through his undersigned attorney, Rodney Richey, Esquire amends his Post-Conviction Relief applications as follows:

- 1. Counsel was ineffective for not pursuing a jury trial;
- 2. Counsel was ineffective for not pursuing a defense that Applicant was forced to kill the victim by his Stepfather;
- 3. Counsel was ineffective for not pursuing a defense that Applicant did not have the ability to conform his actions at the time of the incident;

Wherefore Applicant request a hearing on all the above issues and issues already plead in his application.

Respectfully Submitted

Rodney Richey, Esquire
RICHEY AND RICHEY, P.A.
Post Office Box 10916
Greenville, SC 29603
864-467-0503
864-467-0646 (fax)

Dated: May 28, 2021

State of South Carolina)	
)	
County of Spartanburg)	
David Boggs,	)	2017-CP-42-2489
)	
Applicant,)	
)	
v.	)	Transcript
)	
State of South Carolina,	)	of
)	
Defendant.	)	Post-Conviction
	)	Relief Hearing
)	
)	
)	
)	
)	
)	

Date: June 1, 2021

Time: 9:41 a.m.

Location: Spartanburg County Courthouse 180 Magnolia Street, Spartanburg, SC 29306

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable Brian M. Gibbons

For the Applicant:

Rodney Richey, Esq.
Richey and Richey Law Firm
33 Market Point Drive
Greenville, SC 29607

For the Defendant:

William Ray, Esq.
Assistant Attorney General
South Carolina Office of the
Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

Also Present:

Beverly Jones, Esq.
Assistant Attorney General
Chelsey Marto, Esq.

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Cross-Examination of David Boggs by Mr. Ray:	14
Direct Examination of Beverly Jones by Mr. Richey:	22
Cross-Examination of Beverly Jones by Mr. Ray:	32
Applicant's Closing Statements:	42
Defendant's Closing Statements:	43

EXHIBITS

Applicant's Exhibit No. 1 - Dr. Veronen's Report:	9
Applicant's Exhibit No. 2 - Psychiatric Evaluation:	9

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PROCEEDINGS

THE COURT: All right. Mr. A.G., if you'll introduce the case for me today.

MR. RAY: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. RAY: This is the "Matter of David Boggs versus The State of South Carolina." This is Case Number 2017-CP-42-2489. Mr. Boggs is presently confined in the South Carolina Department of Corrections. He was indicted in May of 2015 by the Spartanburg County Grand Jury for one count of murder and another count of possession of a weapon during the commission of a violent crime.

He entered a guilty plea on July 25th, 2016, before the Honorable J. Derham Cole, where he -- he pled to the lesser included offense of voluntary manslaughter, as well as the -- the firearms provision. He was sentenced to 25 years imprisonment. He did not appeal his plea or his sentence.

He filed an application for post-conviction relief in July of 2017. For one reason or another, that application was not

1 forwarded to the Attorney General's Office
2 until, I believe, July of 2020. At that time,
3 we made our return and moved for a more
4 definite statement on the allegations he
5 initially raised. His attorney advised him to
6 plead guilty. He didn't fully understand what
7 he was agreeing to. But in the amended
8 allegations, we have ineffective assistance of
9 counsel for failing to pursue a jury trial,
10 ineffective assistance of counsel for not
11 pursing a defense that the applicant was
12 forced to kill the victim by his stepfather,
13 and then, finally, ineffective assistance of
14 counsel for not pursuing a defense that the
15 applicant did not have the ability to conform
16 his actions at the time of the incident.

17 And with that, Your Honor, I will go
18 ahead and turn it over to Mr. Richey.

19 THE COURT: All right. Mr. Richey, you ready
20 to proceed?

21 MR. RICHEY: Yes, sir. We'll call Mr. Boggs.

22 THE COURT: All right. Mr. Boggs, come on up
23 here. Where's the witness stand? Right over
24 here?

25 THE BAILIFF: Yes, sir. Right in front.

1 THE COURT: All right.

2 (WHEREUPON, the witness is sworn.)

3 THE COURT: Thank you. Have a seat there.

4 Make sure you speak loud. Is there a

5 microphone over there?

6 THE BAILIFF: Yes, sir.

7 THE COURT: All right.

8 DIRECT EXAMINATION

9 BY MR. RICHEY:

10 Q Sir, would you state your name, please?

11 A David Boggs.

12 Q And, Mr. Boggs, are you currently in the Department
13 of Corrections?

14 A Yes, sir.

15 Q And what are -- are you there for the charges that
16 the Attorney General read?

17 A Yes, sir.

18 Q Okay. And what type of sentence did you receive?

19 A Twenty-five years.

20 Q Okay. And who represented you on those charges?

21 A Beverly Jones.

22 Q And you filed an application for post-conviction
23 relief that's -- is that correct?

24 A Yes, sir.

25 Q And you filed this application because you believe

1 your attorney did not effectively represent you; is
2 that correct?

3 A Yes, sir.

4 Q How old are you?

5 A I'm 24.

6 Q Okay. And how old were you at the time this
7 incident occurred?

8 A Nineteen --

9 Q Nine --

10 A Eighteen. When what -- what incident occurred?

11 Q The --

12 A I'm sorry.

13 Q The charges that you have.

14 A Oh. Yeah. I was 19.

15 Q Okay. And did you have the opportunity to discuss
16 these charges with your attorney?

17 A Uh-huh.

18 Q You did? You've got to answer yes or no.

19 A Yes, sir.

20 Q Okay. All right. In this case -- now this was an
21 incident where a gentleman was shot; is that
22 correct?

23 A Uh-huh.

24 Q And what relationship did you have to this
25 gentleman?

1 A He was my stepfather's cousin.

2 Q Okay. And at -- this gentleman, he had a history
3 of sexually abusing you; is that correct?

4 A Yes, sir.

5 Q And -- and did you tell your stepfather about that?

6 A I did.

7 Q And on the date of this incident, did your
8 stepfather assist you in doing this?

9 A Yes, sir.

10 Q He did? Okay. And did he convince you -- did he
11 convince you this was a good idea?

12 A Yes, sir.

13 Q Okay. Did you talk to Ms. Jones about that, your
14 attorney?

15 A No, sir.

16 Q You did not talk to her about that?

17 A Not really.

18 Q Okay. Well let me -- let me -- I've got
19 these . . .

20 MR. RICHEY: I'm going -- I'm going to offer
21 these two exhibits at this time. Well, let me
22 do this -- hold on, Judge.

23 THE COURT: All right.

24 MR. RICHEY: We offer these as Applicant 1 --
25 1 Exhibit.

1 THE COURT: Any objection?

2 MR. RAY: No objection, Your Honor.

3 THE COURT: Without objection, entered into
4 evidence as Applicant's 1. This is all within
5 -- the psychiatric evaluation is Applicant's
6 2?

7 MR. RICHEY: Yeah. Well, I don't know -- I
8 think she marked them both as 1. Is that --

9 THE COURT REPORTER: No. I marked 1 and 2.

10 MR. RICHEY: I'm sorry. I didn't --

11 THE COURT: Yeah. Psychiatric evaluation is
12 Applicant 2 and the psychological -- or Dr.
13 Veronen's report is Applicant's 1.

14 MR. RICHEY: Okay. Yes, Your Honor.

15 THE COURT: All right. Without objection from
16 the State?

17 MR. RAY: No objection.

18 THE COURT: Without objection, entered into
19 evidence.

20 (WHEREUPON, Dr. Veronen's report is
21 entered into evidence as Applicant's
22 Exhibit No. 1.)

23 (WHEREUPON, the psychiatric evaluation is
24 entered into evidence as Applicant's
25 Exhibit No. 2.)

1 THE COURT: You need him to look at it?

2 MR. RICHEY: Yes, sir.

3 THE COURT: All right. Here you go.

4 MR. RICHEY: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Q Sir, I'm going to hand you these two documents.

7 And these two documents are the evaluations you've
8 had done in your case, correct?

9 A Yes, sir.

10 Q Okay. You can -- you can touch them. I'm going to
11 take you to the first one. Let me see this one.

12 This one. Sir, this -- did -- did your attorney
13 review these documents with you?

14 A I don't recall seeing these documents.

15 Q Okay. You understand these were evaluations done
16 on you by these doctors? You understand that?

17 A Yes, sir.

18 Q Okay. And you don't -- do you have any
19 recollection of seeing or reviewing those
20 documents?

21 A No, I have not seen this document.

22 Q Ever?

23 A Unh-unh.

24 Q You've got to answer. Speak up.

25 A No, sir.

1 Q Okay. Well, do you know in this document, it -- it
2 details about how your stepfather took all of these
3 actions to help you -- to help the outcome of this
4 killing? Do you realize that's in that document?

5 A Yes, sir.

6 Q Okay. And you and your attorney did not discuss
7 that document; is that what you're saying?

8 A She talked a little bit about this.

9 Q You -- okay. Let's -- let's get this clear. That
10 document in your hand --

11 A Yes, sir.

12 Q -- did you and your attorney go over it in
13 preparation for your trial?

14 A No.

15 Q Okay. The information within that document about
16 the actions of your stepfather and all this stuff,
17 did y'all go over that?

18 A Yes, sir.

19 Q Y'all did? Okay. And is it your position that you
20 should have had a jury trial?

21 A Yeah. Yes, sir.

22 Q Okay. And is it your position, based off the
23 information in that docket -- document, that you
24 could have won at trial?

25 A Yes, sir.

- 1 Q Okay. All right. And -- and did y'all discuss any
2 kind of defense about coercion or anything at all
3 about that?
- 4 A I don't recall.
- 5 Q You got to speak up, David.
- 6 A I said, "I don't recall."
- 7 Q Okay. The second document that I'm referring to
8 you is another evaluation done on -- done on you,
9 and I will take you to Page 4. And this is Dr.
10 Schwartz-Watts, Madison's (verbatim) -- is that the
11 right one?
- 12 A Yes, sir.
- 13 Q Okay. I want you to -- to look at -- it says,
14 "Opinions." You see "Opinions"?
- 15 A Yes, sir.
- 16 Q Okay. I want you to read Number 3.
- 17 A "Due to his PTSD and borderline personality, he was
18 unable to conform his conduct to the requirements
19 of the law."
- 20 Q Okay. Did you discuss that -- that finding or
21 opinion with your attorney?
- 22 A No, sir.
- 23 Q You said?
- 24 A No, sir.
- 25 Q Okay. And -- and do you believe that this had --

1 this would have an impact on a jury trial that you
2 would have?

3 A Yes, sir.

4 Q Okay. And -- and so is it your position now that
5 your lawyer should have pursued a jury trial?

6 A Yes, sir.

7 Q Okay. And you -- and you believe that at a jury
8 trial that you would have had a favorable outcome
9 based off this information?

10 A Yes, sir.

11 Q And you did -- you did discuss in the transcript
12 with the Judge about your mental health, right?

13 You did have a history of mental health --

14 A Yes, sir.

15 Q -- is that correct?

16 A Yes, sir.

17 Q Okay. Now, I'm going to go through -- now, this
18 transcript, you -- you told the Court that you were
19 satisfied with your lawyer and all that, right?

20 That -- that you were satisfied and all that from
21 this transcript, correct?

22 A Yes, sir. I think so.

23 Q Can you tell me why you answered the question
24 saying that you're satisfied with the lawyer, that
25 the lawyer had done everything? Why did you answer

1 those questions in that manner on this transcript?

2 A At the time, I -- I thought it was okay, but now I
3 realize that I was wrong for believing that.

4 Q Okay. And -- and you were facing a potential life
5 sentence, correct?

6 A Yes, sir.

7 Q Okay. And you're asking this Court to grant you a
8 new -- a new trial so you can have a jury trial,
9 correct?

10 A Yes, sir.

11 Q And even though -- you got 25 years, correct?

12 A Yes, sir.

13 Q You got the case reduced, correct?

14 A (No response.)

15 Q You've got to answer.

16 A Yes, sir.

17 Q Okay. And you still want this Court to grant you a
18 new trial, even though in a new trial you might be
19 facing up to life, correct?

20 A Yes, sir.

21 Q Okay. Thank you. Answer any questions the
22 Attorney General has for you.

23 THE COURT: All right. Mr. Ray?

24 CROSS-EXAMINATION

25 BY MR. RAY:

1 Q This is William Ray on behalf of the State. You
2 doing okay, Mr. Boggs?

3 A Yes, sir.

4 Q So will you tell me, when did you first come to be
5 in contact with your attorney?

6 A Which attorney?

7 Q Beverly Jones.

8 A It was while I was in the county jail.

9 Q You were in county jail? How long prior to your
10 guilty plea do you -- roughly, do you think it was?

11 A I -- I don't know. Maybe -- the first time I seen
12 her. I can't remember.

13 Q Do you remember meeting with her before you pled
14 guilty?

15 A Yes, sir.

16 Q Yeah. Do you know about how many times?

17 A A few times.

18 Q Do you remember what you discussed with her?

19 A Details of what happened.

20 Q And what -- what were -- were those details? You
21 said -- you said you didn't mention your stepfather
22 forcing you to -- to commit the murder, but what
23 did you tell her?

24 A I told her all about Eddie and what he'd done to me
25 and my actions to that. I left my -- well, a good

1 bit of my stepdad out of it, and I believe I
2 probably should have said more.

3 Q Okay. Do you remember when you were evaluated by
4 these two doctors?

5 A Uh-huh.

6 Q Okay. And did you discuss your mental health with
7 your attorney prior to these evaluations?

8 A Yes, sir.

9 Q What did you tell her about that?

10 A Well, at the time, all I knew was that I just had
11 depression and anxiety. After being evaluated, I
12 found out I have more psychological issues.

13 Q Okay. And you did not talk with your attorney
14 about these new psychological issues that you
15 discovered?

16 A Not in-depth, but we did talk a little bit.

17 Q Okay. And what did y'all talk about when you
18 talked a little bit?

19 A She just told me what I had and what it comes from
20 or what can cause it.

21 Q So did you talk about how that might affect your
22 case at all?

23 A Uh-huh. Yes, sir.

24 Q What she -- what'd she say?

25 A I really don't remember a lot of the things that me

1 and her talked about.

2 Q Uh-huh.

3 A So I can't answer.

4 Q Okay. Did she discuss possible defenses that you
5 may have?

6 A Yes, sir.

7 Q Okay. And what were those defenses if you were
8 going to go to trial?

9 A Self-defense.

10 Q Self-defense?

11 A Yes, sir.

12 Q Okay. So let me ask you: Did you have -- do you
13 know if your attorney spoke with your stepfather or
14 spoke with anybody else who may have been a
15 witness?

16 A Yeah. I know she spoke with my mom. I don't know
17 if she spoke with my stepdad. I think she did. I
18 believe she did, but I'm not sure.

19 Q Okay. And at any point during these discussions,
20 did you tell her that you wanted to enter a guilty
21 plea, or was your story -- your strategy always to
22 go to trial?

23 A Up until the last minute, it was -- I was going to
24 go to a trial, but at the last minute, it changed
25 to a guilty plea.

1 Q Did you -- did you tell her, though, that you
2 wanted her to negotiate a plea for you, if
3 possible?

4 A I don't know, sir.

5 Q You don't recall? Okay. Now, you do recall
6 telling the attorney -- or telling the judge that
7 you were satisfied with your attorney; is that
8 correct?

9 A Yes, sir.

10 Q And you said that it's only now, with hindsight,
11 that you decided that you -- you shouldn't have
12 said you were satisfied? You, in fact, were
13 dissatisfied; is that correct?

14 A Yes, sir.

15 Q Okay. You didn't offer any complaints at the time?

16 A No, sir.

17 Q No. Okay. Now let me ask you about your
18 stepfather. Was he ever -- I mean, did he threaten
19 you at all to -- to commit this crime?

20 A No. He didn't threaten me.

21 Q What did he say to you?

22 A He convinced me that since there was -- since that
23 was going on, I had to do something to take care of
24 it; and he had me believing that, that was what I
25 should have done.

1 Q And when you say "since that was going on," what
2 was -- what was "that," that you're referring to?

3 A The sexual abuse from Eddie.

4 Q Okay. And so he did -- did you believe that he
5 would have harmed you if you did not kill Eddie?
6 Your stepfather?

7 A No, sir.

8 Q You did not believe that? Okay. Now, let me also
9 ask you about . . .

10 MR. RAY: Or just one moment, Your Honor,
11 please.

12 THE COURT: Okay.

13 Q Now, as far as your mental health is concerned,
14 you're saying today that you were unable to conform
15 your behavior to the requirements of the law; is
16 that correct?

17 A Yes, sir.

18 Q Did you believe that you could discern the
19 difference between what might be right and wrong at
20 the time?

21 A At the time, no, sir.

22 Q You did not? Now, I believe in the transcript when
23 the solicitor was saying -- giving the facts of the
24 case that you agreed with, he said that after the
25 police showed up, you were taken and questioned by

1 the police. Do you recall that?

2 A Yes, sir.

3 Q And I believe he worded it as "you broke down and
4 you confessed." Do you remember that?

5 A Uh-huh.

6 Q Would you agree with that?

7 A Can -- agree to?

8 Q Do you believe that you broke down and confessed to
9 the police that you had killed Mister -- Mr. Eddie?

10 A Yes, sir.

11 Q Okay. And when -- when they said "broke down,"
12 what -- what does that mean?

13 A I finally admitted to what I did.

14 Q Okay. Were you upset at the time?

15 A Yes, sir.

16 Q You were? Okay. And you had previously gone to
17 the police about Mr. Eddie; is that correct?

18 A Yes, sir.

19 Q And -- and the relationship/the sexual abuse, and
20 the police didn't offer much help or --

21 A No, sir.

22 Q -- said they needed more evidence; is that correct?

23 A (Nods head yes.)

24 Q Okay. And so do you believe now that what you did
25 was wrong?

1 A Yes, sir.

2 Q Okay. But you did not at the time?

3 A No, sir.

4 Q Okay.

5 MR. RAY: Just one more moment, Your Honor.

6 THE COURT: Okay.

7 Q So did -- your story that you told your attorney,
8 was that the same thing that you told the police?

9 A Yes, sir.

10 Q Okay. And did you tell anybody else a different
11 version of your story?

12 A No, sir.

13 Q And nobody -- you told no one about the details of
14 your stepfather or anything like that?

15 A No, sir.

16 Q Okay. So she -- at the time, she was unaware of
17 this because you never told her?

18 A (No response.)

19 Q Okay. But you're asserting now that she should
20 have pursued a defense at trial based upon your
21 stepfather's --

22 A Yes, sir.

23 Q Okay. And just to be clear, she never made you
24 aware of any other plea offers in the case from --

25 A The only plea offer I was aware of was the one at

1 the last second.

2 Q Right before trial?

3 A Yes, sir.

4 Q Okay.

5 MR. RAY: No further questions, Your Honor.

6 THE COURT: All right. Any redirect?

7 MR. RICHEY: No, sir.

8 THE COURT: All right. Thank you, sir. You
9 can step down.

10 (WHEREUPON, the witness is excused.)

11 MR. RICHEY: We'll call Ms. Jones.

12 THE COURT: All right. Ms. Jones?

13 (WHEREUPON, the witness is sworn.)

14 THE COURT: Thank you. You can have a seat.

15 MR. RICHEY: Ms. Court Reporter, Rodney
16 Richey.

17 DIRECT EXAMINATION

18 BY MR. RICHEY:

19 Q Ms. Jones, where are you employed?

20 A At the Public Defender's Office in the 7th Circuit.

21 Q And -- and you have done a -- a lot of criminal law
22 in your career; is that correct?

23 A I have.

24 Q And you've done defense and prosecution work,
25 correct?

1 A I have.

2 Q And with -- do you recall representing Mr. Boggs in
3 -- at the Public Defender's Office?

4 A I do.

5 Q And you were appointed to represent him, correct?

6 A I was.

7 Q And -- and I'm going to get to these issues with
8 him.

9 This -- what has been marked as these Exhibits
10 1 and 2, I'm going to give these to you and ask
11 you, do you -- do you recall those documents in
12 your representation of Mr. Boggs?

13 A I do.

14 Q And -- and, well, how was those documents obtained?

15 A As his attorney, I contracted with both of these
16 physicians for these evaluations.

17 Q Okay. And so these are generated by -- by your
18 office and by you?

19 A Well, they were generated by the individual
20 physicians upon consult with me as his attorney.

21 Q Yes, ma'am. Let me -- so you -- you've heard the
22 testimony. Tell me -- walk me through. Mr. Boggs,
23 did he ask you for a jury trial?

24 A No. Mr. Boggs never asked me for a jury trial.

25 When I first started representing him, it was very

1 frequent that he would ask me if there was an offer
2 in his case, both directly and through -- as you
3 know, here we have the kiosk system that the jail
4 has set up that allows us to email directly with
5 our clients. And he often asked me if I had an
6 offer yet. And I would, obviously, have to tell
7 him no. The -- he is correct. The only offer that
8 was ever received in his case was at the last
9 minute.

10 Q When you say "last minute," tell me what that
11 means.

12 A That means the day we were prepared to start trying
13 the case.

14 Q Okay. And -- and so when you went to him with this
15 offer, what was his reaction to it?

16 A He seemed interested to me because he had seemed
17 concerned throughout --

18 Q Uh-huh.

19 A -- and wanted an offer. Well, that was a topic of
20 conversation we had, and a topic of conversation I
21 had frequently with the prosecutor, Deputy
22 Solicitor Bulsa. It's also referenced in the
23 transcript that I even had a conversation with one
24 of the investigators in the case about why I
25 couldn't convince or why I was not getting an offer

1 from Boggs (verbatim), that it seemed to me and he
2 agreed -- I mean, from Bulsa -- that it seemed a
3 voluntary case when he looked at it.

4 Q Okay.

5 A So it was a -- it was a frequent topic, but in
6 light of the fact that for a year and five or
7 six -- for maybe five months, we had no offer. I
8 had to proceed full onboard to defend the only
9 charge that faced him and that was murder. I
10 wasn't -- I'm not of the mind that he should just
11 plead to a murder. I've never taken that approach
12 in many cases. And so we had to prepare a defense,
13 and that's where this came from.

14 Q And when you say you "saw the case as a voluntary
15 case," what do you mean by that?

16 A Well, in my experience and my examination of the
17 facts, it was a situation where the -- there --
18 there was episodes and anger expressed by Mr. Boggs
19 about some of the events that occurred right before
20 or the days before the death in this case,
21 specifically involving what he considered
22 mistreatment of his dog. He became very angry.

23 Now, if you put that on top of all this other
24 psychological and -- dynamic that was swirling
25 around, I thought that perhaps took this case out

1 of what it would have been classically a murder.
2 Eddie Richards was asleep when he was shot two
3 times in the head by Mr. Boggs.

4 Q And so when you were preparing for trial and you
5 got these documents/evaluations, did you discuss
6 these with Mr. Boggs?

7 A I did. We had discussed all along, contrary to his
8 recollection, we had many long conversations where
9 I, basically, interviewed him about his life,
10 probably about the same way that these two
11 physicians did.

12 And, also, contrary to what Mr. Boggs said,
13 back in September, within six months of his arrest,
14 the issue of, "My stepfather made me do this," came
15 to the forefront kind of unexpectedly. It didn't
16 come directly from him telling me, but I was
17 contacted by Deputy Bulsa that they had intercepted
18 a postcard that Mr. Boggs had tried to mail to his
19 father. Now, remember he lived with his mother and
20 stepfather, but he had a father and stepmother, as
21 well. He mailed a postcard out in which he said,
22 "Roy" -- that was the stepfather -- "He made me do
23 this."

24 Q Okay.

25 A And within four weeks of that postcard, his

1 codefendant and girlfriend, Doris Angus, mailed a
2 letter also to his father, David Boggs, in which
3 she set forth the same story and said, "I'm going
4 to turn -- I'm going to create some loopholes,
5 because I'm going to make sure that David gets zero
6 years."

7 Q You're saying a subject from the Detention
8 Center --

9 A Yes. They -- they blocked --

10 Q Yeah.

11 A -- they -- it never got out in the mail. Bulsa got
12 it, gave it to me, and then I went in September;
13 and we had a conversation about the postcard.

14 Q And if you had not gotten this plea offer, you
15 would have proceeded to trial, of course? Right?

16 A Correct.

17 Q And -- and what -- your defense and strategy would
18 have lied within these documents; is that correct?
19 Part of it?

20 A Part of it.

21 Q Part of it.

22 A Yeah.

23 Q Okay.

24 A But, yes. We would have pursued this and -- and I
25 also in the -- a couple of times in here it's been

1 stated that he pled guilty. To correct that, he
2 actually pled guilty but mentally ill --

3 Q Yep.

4 A -- which encompassed the evaluation of Dr. Maddox,
5 who is a psychiatrist.

6 The -- as you know, the -- in a situation like
7 this where I've raised this defense and raised the
8 issue of his insanity, then the -- the judge would
9 have had to instruct the jury as to all of the
10 different verdicts. I think Mr. Bulsa makes
11 reference in the plea colloquy about why -- how the
12 use or the presence and raising of these defenses
13 caused him to change his position and actually give
14 me -- give me the offer that my client ended up
15 accepting.

16 Q Okay. So -- okay. So because Bulsa read all these
17 mental issues and the stuff by the stepdad, then he
18 was more willing to work with you; is that --
19 that's what you're saying, correct?

20 A Correct.

21 Q Okay. But -- and -- but if you -- if your hand was
22 forced, you would have raised the issues in this --
23 in these documents, correct?

24 A Correct.

25 Q Okay. And do you believe it was in his best

1 interest to go to trial or just plead here?

2 A I thought it was in his best interest to plead.
3 The -- the version that he subsequently adopted and
4 espoused about Roy Griffin forcing him to commit
5 this event, was contrary to the evidence. It was
6 contrary to his two prior statements. It was
7 contrary to the statement of his codefendant. And
8 the evidence would have shown that the stepfather
9 did -- did nothing to threaten him.

10 And with a deeper delve into the dynamics of
11 the family -- I think even Dr. Veronen mentions
12 this -- this was an incredibly permissive family.
13 As a matter of fact, his two older -- two eldest
14 siblings were no longer allowed to come visit at
15 this home, because -- prior to this -- because
16 David Boggs's father and stepmother found the
17 family so -- the lack of discipline so extreme that
18 they didn't want their other children exposed to
19 it. And so the idea that this very permissive home
20 where there were no rules, that out of that, Mr.
21 Griffin forced him to do something, to me didn't
22 seem like an argument the jury was going to buy.
23 Q And -- and you believe that his home environment
24 had a role in his mental health?
25 A I -- I don't know if I'm qualified to --

1 Q Okay.

2 A -- to advance an opinion about that. I don't think
3 -- I certainly don't believe the way they conducted
4 -- the parents conducted the day-to-day home life
5 helped his situation, psychologically.

6 Q And that situation would be something that you
7 would have argued at trial, potentially?

8 A Yes.

9 Q Okay. And how many times -- do you recall how many
10 times you spoke with him about this case?

11 A A lot.

12 Q A lot?

13 A I didn't really count the specific number of
14 visits --

15 Q Yeah.

16 A -- but I spoke to him a number of times from hours
17 at length to sometimes very short conversations.
18 He was prepared in-depth about meeting with both of
19 these doctors, so that he would understand that he
20 could be honest with them, because I needed his
21 cooperation. And I met with him about all facets
22 of the case.

23 Q And -- and that was -- I use the phrase, there was
24 some abuse going on here? Some? And --

25 A Well -- and this is a complicated issue in this

1 case, and it was going to make it complicated at
2 trial, because there -- if you read Dr. Veronen's
3 report as far as the history, touching started at
4 14. As you know, the age of consent in this state
5 is 16. This result -- this relationship continued
6 on to within a month of this event. So there were
7 two or three years where there was a relationship
8 between them sexually that was beyond consent.

9 Q Uh-huh.

10 A So, you know, to describe it as abuse is, you know,
11 I don't know how you do that. But there was not,
12 in my opinion, a lot of physical coercion, but I
13 believe there might have been some emotional
14 coercion by the victim. I know there was
15 definitely the holding of enticements --

16 Q Right.

17 A -- and especially when he's younger, even slightly
18 beyond the age of consent. You know, I'm going to
19 give you a cell phone if you let me touch you. I'm
20 going to give you \$20. I'm going to let you have
21 some marijuana. You know, that might be coercive
22 enough to -- to negate the consent issue.

23 Q And if the -- if this stuff goes on before the age
24 of consent, from a legal position, it is abuse,
25 correct?

1 A That's correct.

2 Q Okay.

3 A Yes, I agree with that.

4 Q Thank you. Answer any questions the Attorney
5 General has for you.

6 THE COURT: All right. Mr. Ray?

7 CROSS-EXAMINATION

8 BY MR. RAY:

9 Q Ms. Jones, how are you doing?

10 A I'm good. How are you?

11 Q I am doing all right. So, let me just clarify a
12 couple things that I didn't hear already.

13 How long have you been practicing law?

14 A For over 30 years.

15 Q Okay. How much of that has been criminal defense?

16 A Well, I was a prosecutor for 15 years. I took a
17 break, if you can describe it as such, and worked
18 for John White and Ben Harrison for four years in
19 private practice doing, primarily, criminal, but I
20 did domestic, some civil, and some condemnation.
21 Then I came to the Public Defender's Office in '08
22 where I remain now. So a huge portion of it is
23 criminal.

24 Q Okay. And, now, were you appointed to represent
25 Mr. Boggs?

1 A Yes.

2 Q Okay.

3 A As a public defender, yes.

4 Q Okay. And you -- you stated that you met with him

5 multiple times?

6 A I did. That's correct.

7 Q Both in-person and in writing or --

8 A Yes.

9 Q Okay.

10 A Yes.

11 Q And when you were meeting with him, about how long

12 was it until you became aware of this story about

13 the stepfather?

14 A It was in September.

15 Q In September?

16 A Right.

17 Q Okay. So just a few months prior to his plea was

18 entered?

19 A This case was resolved in July, so it was --

20 Q Okay. So a little --

21 A Yeah. Ten --

22 Q -- piece amount of time?

23 A -- months.

24 Q And did you have time to consider whether that

25 would have been a viable defense? Time to review

1 all the evidence and --

2 A I did.

3 Q Okay. And what was your -- your opinion on why
4 that would have been unsuccessful?

5 A As I stated before, there -- the facts of the
6 situation, as would have been proven by the State,
7 were that according to his statement and the
8 statement of his codefendant, who was also his
9 teenage girlfriend at the time, they left the home.

10 And the mechanics of this dwelling are
11 unusual, but it's a family home and this -- Eddie
12 Richards lived in the backyard in what was,
13 basically, a converted storage building. He had
14 put some power in it and lived back there without
15 running water. So he would come into the home.
16 But he -- the two of them left the home, went down
17 to the outbuilding where Mr. Richards was sleeping
18 at night. Ms. Angus held the dog to keep the dog
19 from barking, and, I guess, waking him up, and Mr.
20 Boggs went in and as I stated before, shot the
21 sleeping Mr. Richards who was sleeping on his side
22 facing the wall. Shot him in the back of the head
23 twice and killed him.

24 Q Okay.

25 A Now, the participation of the father -- stepfather

1 was involved the next morning when they cleaned up,
2 took the clothes he was wearing, and I think the
3 shells, maybe. I might not be remembering that
4 correctly, and took them -- and the mother took
5 them to a dump.

6 Q Okay. And so given that the victim was sleeping,
7 did you believe this was a case of self-defense?

8 A No.

9 Q Did --

10 A No.

11 Q -- you tell Mr. Boggs that if he were to go to
12 trial, he would argue self-defense?

13 A No. I don't think we ever talked about that, or if
14 -- if we did, it was for me to explain to him what
15 self-defense was --

16 Q Uh-huh.

17 A -- and explain how this didn't fit.

18 Q Okay. And so in these evaluations that you had
19 done, do you still have a copy of these?

20 A I -- I do.

21 Q Okay. In Dr. Maddox's report and under "Opinions"
22 on Page 4 on Line Number 2, will you just read that
23 aloud, please?

24 A Her Number 2 opinion is, "He was able to determine
25 moral and legal right from wrong and recognize the

1 wrongfulness of his actions."

2 Q Okay. And did you believe that, that would hamper
3 a defense that you could raise regarding his -- his
4 mental state at trial? What effect did you think
5 that statement would have on his defense?

6 A Well, as you know, there's two prongs in the
7 McNaughton doctrine. To be found not guilty by
8 reason of insanity, this prong kicks in. If you
9 don't know what you're doing is wrong, then, you
10 know, you can -- you can be found not guilty by
11 reason of insanity. If in Mr. Boggs's case, you
12 have some type of a mental disorder or disease that
13 impacts your ability to conform to the law, then
14 you -- you are in a either guilty but mentally ill
15 or pleading guilty but mentally ill category. And
16 as you know, with -- and I think I stated this in
17 the transcript, in the undue operation of our law,
18 even if he -- if he went to trial, he would have
19 had to have been found not guilty, period, to walk
20 away from this.

21 Q Right.

22 A He could have been found guilty of murder or a
23 lesser included, but if he was found guilty of
24 either -- guilty but mentally ill of either murder
25 or the lesser included, he was still going to go to

1 prison.

2 Q And so did you discuss all of that with Mr. Boggs?

3 A I did.

4 Q Okay. And did he express an opinion on -- on any
5 of that, that you recall?

6 A I -- I don't actually recollect what his feedback
7 was about it, but in talking throughout the case,
8 he -- he understood from the very beginning,
9 because in -- I think in his first statement, or at
10 least the second statement he gave the police, he
11 talked about -- he, of course, was crying through
12 those interviews -- and he talked about being
13 sorry. He expressed remorse -- excuse me. I
14 believe he said, "He regretted it."

15 At some point, I think, in those statements,
16 he said, "He would regret it for the rest of his
17 life."

18 And so he -- he understood the impact and the
19 action, and that's why he was always saying, "Have
20 we gotten an offer yet? Have we gotten an offer
21 yet?"

22 Q Okay. So he repeatedly asked you if you had
23 received --

24 A For an offer.

25 Q For a plea offer? Okay. And when you finally got

1 an offer, he accepted it, correct?

2 A He did.

3 Q Okay. And did you advise him that you believed it
4 would be beneficial to accept the offer?

5 A I did.

6 Q You did?

7 MR. RAY: Give me just one moment, Your Honor.

8 THE COURT: All right.

9 Q Now, if you would, Ms. Jones, will you just please
10 just give us a bit of information about the process
11 of negotiating this offer with the State?

12 A Well, there were various times that I talked to
13 Deputy Solicitor Bulsa about, you know, "Are you
14 sure you won't consider this?"

15 When he found out -- when he got the postcard
16 and -- or saw the contents of the postcard, he
17 actually reached out to me and said, "Is your
18 client interested in talking to me about those
19 contents?"

20 Well, for a period of a couple of months, we
21 negotiated about how we were going -- how I was
22 going to allow a proffer. And I could never
23 convince him to allow Mr. Boggs to proffer with
24 protection, because I didn't want the solicitor to
25 get a -- another interview of him, complete with

1 more details, and then try to use it later if we
2 couldn't reach an agreement. He wouldn't commit to
3 an agreement.

4 This solicitor has this tendency to want to
5 get a look-see at a cooperating witness before
6 he'll commit, even to using them. And I -- and
7 unless he were to agree to protect him, I wasn't
8 going to allow it. And I was hoping that was going
9 to be the point where I could push him into
10 something for Mr. Boggs, but since that broke down,
11 he wouldn't agree to the terms of the proffer so I
12 could protect Mr. Boggs; and we never did that.

13 But then, later on after these were done, a
14 process that I had been moving toward for a while,
15 when I knew he had mental health issues, I -- I
16 knew from day one when I was assigned this case
17 that they had made a report of sexual abuse within
18 two months of the -- or maybe not even a month of
19 the death of the victim. I knew we were probably
20 moving to this kind of a situation. So -- and I
21 hoped once I got this, I could push him into
22 recognizing his position wasn't as strong as he
23 thought it was with two confessions by my client.
24 Q Okay. Now, let me ask you about the victim here
25 regarding the abuse. You said there was,

1 potentially, some evidence of emotional coercion
2 and -- and enticements. Was there any contrary
3 evidence? Was the -- the victim disabled or . . .
4 A In the plea they presented, and I had learned this
5 from not only Mr. Boggs, the girlfriend, the
6 mother, and his father and stepmother, everybody
7 I've talked to, that Mr. Richards had various
8 issues. He was epileptic, if I remember correctly.
9 And he had, had some kind of a stroke incident on
10 one side or the other, which rendered one of his
11 arms a little less than fully useful, but he was --
12 if you -- if you saw pictures of him, he was a
13 little shorter than average, but a very
14 stocky-looking guy. He was steady in his -- I
15 mean, pretty built.

16 They said he walked with a limp. I don't know
17 that a lot of people talked about that, but he was
18 employed. Mr. Griffin, the stepfather's father,
19 owned a painting company and both Griffin, the
20 stepfather, and Richards, his cousin, I guess, both
21 worked daily in a painting company. So it wasn't
22 that he was completely disabled. He -- I don't
23 think he drove, but I think he had a moped. Well,
24 I guess that's driving. But he didn't own a
25 vehicle. I think he got around on a moped.

1 Q Okay. Whose decision was it, ultimately, to plead
2 guilty?

3 A Well, ultimately, it was his.

4 Q Okay.

5 A The plea can't take place if the --

6 Q Right.

7 A -- client doesn't want to do it.

8 Q And did you believe that he understood what he was
9 doing at the time when he was pleading guilty?

10 A I do. I do.

11 Q Okay. And given everything that you've said here
12 today, had you gone to trial, you had a strategy
13 developed as to how you were going to defend the
14 case?

15 A I did.

16 Q And, nevertheless, you believe that it was in his
17 best interest to plead guilty; is that correct?

18 A I did.

19 Q Okay.

20 MR. RAY: No further questions.

21 THE COURT: All right. Redirect?

22 MR. RICHEY: None.

23 THE COURT: All right. Thank you, ma'am. You
24 can step down.

25 (WHEREUPON, the witness is excused.)

1 THE COURT: Applicant can call its next
2 witness.

3 MR. RICHEY: That's all our witnesses, Your
4 Honor.

5 THE COURT: All right. Applicant rests. Any
6 further evidence or witnesses from the State?

7 MR. RAY: Nothing further from the State, Your
8 Honor.

9 THE COURT: All right. The State rests. All
10 right. Let's hear argument. Mr. Richey.

11 APPLICANT'S CLOSING STATEMENTS

12 MR. RICHEY: Thank you, Your Honor. Your
13 Honor, I think the evidence in this case --
14 Mr. Boggs, he is asking the Court to grant him
15 a new trial based off these reports. It is
16 his position at the time that he pled guilty,
17 he was not familiar enough -- I use the word
18 "enough" with these reports that he did not
19 pursue a jury trial. I think his testimony is
20 pretty clear that had he known in some detail
21 what's in these reports, he would have went to
22 trial. And I think Counsel testified that if
23 she had to go to trial, she would use these
24 documents to pursue a defense for him.

25 If Mr. Boggs understands that -- he

1 understands that he got a benefit from the
2 representation. I -- I'll just be frank with
3 that. But upon review, he is saying that he
4 would like the Court to issue him a new trial.
5 Thank you, Your Honor.

6 THE COURT: All right. Mr. Ray?

7 DEFENDANT'S CLOSING STATEMENTS

8 MR. RAY: Your Honor, I mean, of course, Mr.
9 Boggs must show both deficiency and prejudice
10 from his counsel's performance in order to
11 prevail. As far as deficiency, I don't think
12 he's proven that at all. He -- he stated that
13 he didn't even tell his counsel that his
14 stepfather had forced him to kill the victim.
15 Of course, she stated that she was aware of it
16 and she had considered it and didn't believe
17 that it -- it was supported by any of the
18 evidence.

19 And then on the claim of his inability to
20 conform his actions, she also was aware of
21 that. She actually went and had two
22 evaluations set up for him. She would have
23 proceeded on to trial with that defense in
24 mind, but it was his decision to plead guilty.
25 He stated -- or it was -- she stated that he

1 was frequently asking her for a plea offer.
2 He accepted the first plea offer that he was
3 given, and that he understood the
4 ramifications of that plea pursuant to the
5 discussions that she had with him.

6 And then, again, as for prejudice,
7 it's -- you must show that but for his counsel
8 errors, he would have proceeded to trial. I
9 don't think there's any evidence that's been
10 presented that -- that shows that had his
11 attorney done anything differently in regards
12 to these two allegations, he would have
13 insisted upon going to trial. And, therefore,
14 the State respectfully requests that this
15 Court dismiss these allegations.

16 THE COURT: All right. Anything else in
17 reply?

18 MR. RICHEY: No, Your Honor.

19 THE COURT: All right. Thank you, gentlemen.
20 I'm going to take the matter under advisement.
21 I want to review the exhibits offered into
22 evidence, as well as the transcript of record
23 from the hearing previously. And I'll be --
24 either I or my law clerk will be in touch with
25 my decision at a later time.

1 I anticipate I'll make a decision on it
2 this week. Sir, so you'll know, you'll hear
3 from your lawyer one way or the other, then
4 y'all can decide what you want to do. Okay?
5 Thank you very much. That concludes this
6 hearing.

7 (Whereupon the within hearing was
8 concluded at 10:29 a.m.)

9 (*This transcript may contain quoted material.
10 Such material is reproduced as read or quoted
11 by the speaker.)

Lois J Veronen, Ph. D.
Licensed Clinical Psychologist #259
229 Johnston Street
Rock Hill, South Carolina 29730
(803) 327-9449

July 8, 2016

Beverly Jones, Attorney at Law
 Assistant Public Defender
 366 North Church Street, Suite 3000
 Spartanburg, South Carolina 29303

Court's *in*
 Exhibit
 1

Re: David Ronald Boggs

Dear Ms. Jones;

At your request I have conducted an examination of your client, David Boggs. Dave is a 19-year-old Caucasian male. He has been incarcerated since February 9, 2015, charged with the murder of his stepfather's cousin, Eddie Richards. Also charged for involvement in the death of Eddie Richards are David's stepfather, Roy Emmanuel Griffin and Dave's girlfriend, Doris Angus. The purpose of this examination was to examine Dave's history of sexual victimization, the impact of this sexual victimization, and to determine whether this history and his psychological profile is consistent with elements of Battered Child Syndrome, Rape Trauma Syndrome, or Battered Person Syndrome.

The Battered Child Syndrome is a term used to describe the defense of a child who, having experienced violence or sexual trauma, is traumatized by the victimization to the extent that it impairs his ability to formulate independent intention and actions. For some victims who have been severely abused there may be a loyalty and secrecy that prevents them from disclosing the abuse and/or battery. However, when the Battered Child Syndrome is used as a defense for the child who has killed or injured the abuser, it appears that the fear response of "fight, flight, or freeze" of the primitive brain is highly activated. The child may act to destroy the abuser without consideration for other courses of action. Thus the child may not engage in thoughtful or intentional behavior, but appears to instinctively respond in ways to stop the abuser.

In the process of conducting this examination extensive documents provided by the Public Defender's Office were reviewed. Additionally, school records were requested and reviewed. Additionally, psychological instruments that have been found sensitive to the effects of violence and sexual victimization were administered. Finally, a standard



measure of psychological personality functioning was administered, and lengthy interviews were conducted.

Dave has a history of mental health counseling and treatment with medications. He was first seen in 2012 for depression and self-injurious behaviors. He received counseling; the cutting and self-harm behaviors abated. He was also placed on antidepressant medication which he has continued to take. For a period of time he was also placed on a medication for attention deficit, but that medication was discontinued.

For the purpose of the present evaluation, Dave was interviewed and completed psychological instruments at the Spartanburg Detention Center on three occasions: May 18, 2016 for 3.5 hours, June 1, 2016 for 2.5 hours and June 30, 2016 for 2 hours. At the initial meeting Dave indicated he understood the purpose of the evaluation. He had been informed by his attorney. He was cooperative and put forth good effort. He did not appear to tire despite the length of the interview and tests. When discussing his victimization there were many times when his affect was flat as if he was describing a movie rather than circumstances of his own life. At other times he was anxious and timid. At other times he was cynical and sarcastic. He revealed the greatest variation in affect and demeanor when he was talking about his girlfriend, Doris.

The following measures were administered to David as part of an assessment battery:

1. The Detailed Assessment of Post Traumatic Stress (DAPS) The DAPS is a detailed and comprehensive clinical measure of trauma exposure and post-traumatic stress in individuals who have a history of exposure to one or more potentially traumatic events. The instrument assesses peri and post-traumatic symptoms (e.g. intrusion, avoidance, hyperarousal) and associated features (e.g. dissociative symptoms, substance abuse, suicidality) related to a specific traumatic event. It generates a tentative diagnosis of Post-Traumatic Stress Disorder (PTSD) or Acute Stress Disorder (ASD). The DAPS assesses current and lifetime history of DSM-IV-TR trauma exposure, as well as the severity and clinical significance of an individual's post-traumatic symptoms, including dissociative, cognitive and emotional responses. The DAPS scales include the three PTSD symptom clusters (Re-experiencing, Avoidance, and Hyper-arousal) and three associated features of PTSD: Trauma-Specific Dissociation, Suicidality, and Substance Abuse. Two validity scales identify over-reporting and under-reporting of psychological symptoms.
2. Personality Assessment Inventory (PAI), authored by Leslie Morey, PhD, is a multi-scale test of psychological functioning that assesses constructs relevant to personality and psychopathology evaluation (e.g., depression, anxiety, aggression) in various contexts including psychotherapy, crisis evaluation, forensics, personnel selection, pain/medical issues and child custody assessments. The PAI has 22 non-overlapping scales, providing a comprehensive overview of psychopathology in adults. The PAI contains four kinds of scales: 1) validity scales, which measure the respondent's approach to the test, including faking good

or bad, exaggeration, or defensiveness; 2) clinical scales, which correspond to psychiatric diagnostic categories; 3) treatment consideration scales, which assess factors that may relate to treatment of clinical disorders or other risk factors but which are not captured in psychiatric diagnoses (e.g., suicidal ideation); and 4) interpersonal scales, which provide indicators of interpersonal dimensions of The Personality Assessment.

3. Additional interviewing was conducted to obtain information about educational background, sexual trauma and victimization history, relevant social history, mental health history, and drug and alcohol history.

Question 1: What was the nature of the relationship between David Boggs and the decedent, Eddie Richards?

Dave met Eddie after he started visiting his mother and stepfather at the end of his 8th grade. Eddie was his stepfather's cousin. Eddie had lived with his stepfather before his mother and stepfather married. Dave described Eddie saying, "he had birth defects, the left side of his face drooped down, and his hands were awkward." After Dave started living with his mother and stepdad, Eddie began to befriend Dave by showing attention to him and encouraging him to play his X-Box. This was the end of Dave's 8th grade in school. Eddie was a man in his 30's. The playing of video games was a first step in grooming Dave for sexual contact. The game was located in Eddie's room and situated with the screen on the wall. . In order to play the game, they had to sit on the bed. Eddie began to touch David on the inside of his leg toward his crouch. Eddie said he would give Dave money. According to Dave he said "I will give you \$20.00 if you let me touch you and play with it." (Dave's penis). Dave felt confused and conflicted about the sexual contact with Eddie. He did not feel good about it. This was an older man, not someone his own age whom he liked. He felt helpless to refuse. Dave said he coped with it by zoning out and keeping his mind on the game while his body was being touched and manipulated. After several months Eddie was paying David for more sexual contact. Approximately one year later Eddie purchased a building, a prefabricated shed which was placed behind the dwelling. He covered it with black plastic to insulate it and ran electricity to it so he could have an air-conditioning, television, and other electronics. Eddie used the main dwelling for the bathroom and ate his meals in the main dwelling. Dave's mother cooked for her family and for Eddie.

After Eddie moved into the shed, he had less risk of detection from Dave's mother; Dave was then coerced into greater sexual contact. Cooperation with the sexual contact was obtained by giving Dave money, cigarettes, alcohol, and marijuana, Eddie also bought Dave a cell phone. Dave submitted to Eddie's instructions including sexual contact involving a dildo, rear entry sex, and the making of nude photos. Dave also wore a dress one time at Eddie's instruction.

Dave said he described himself as bi-sexual to his friends. Dave said his first sexual contact was with Eddie. Dave said he had romantic relationships with both boys and girls in 9th grade. He had always enjoyed the companionship and conversation with females and sought out their company. He had one serious girlfriend prior to Doris.

Dave met Doris at school in Boiling Springs. They met in a gym class. They were both repeating the 9th grade. Doris said she liked Dave's "goth boy" looks. According to Dave this look included long shoulder length hair which was dyed black, the use of make-up including black eye liner, painted finger nails, and the wearing of tight jeans. They became friends and began to share things about their lives. They wanted to be together, but her foster parents did not approve of Doris being with Dave.

According to Dave, Doris's life with her foster parents was terrible. The foster parents were abusive and she was hit and struck by them. Additionally, her brother who was one year younger than she was raping her. After several months, Dave convinced Doris to run away. They left school together and hid out in the woods for several hours. Eventually, Dave called his mom and convinced her to come and get the two of them. His mom took Dave and Doris to the house and they convinced his stepdad to let Doris stay. The foster parents came to the house to try to convince Doris to come home with them. According to Dave, they also told Dave, Dave's mother, and stepfather "do not believe anything that girl says." Doris refused to go with her foster parents and according to Dave, her foster father chased her into a field. Dave's mother threatened to call the police and the foster parents left and Doris remained to stay with them.

Initially, when Doris moved in with Dave's family she slept in his sister's room. Later Doris and Dave were allowed to sleep in the same bedroom. According to Dave, his mother and stepfather loved Doris. She was sweet and a hard worker. She helped with cleaning and meal preparation and anything else that she could do. She was already 18 when she moved in and so Dave's mother permitted her to quit school. Dave's mother wanted Dave to continue attending high school.

According to Dave these days with Doris were the best days of his life. He had someone to talk to, care for him, keep him company, and treat him like a human being. They enjoyed sexual contact with one another and Dave felt very connected to Doris. According to Dave both of them would go to Eddie's building occasionally after Doris moved in. Eddie's bid for Dave, typically was a cell phone text which said, "Let's talk"

In December of 2014 tension began to build. Eddie continually wanted Dave to come to the shed. Dave did not come without Doris. On one occasion, Eddie paid Dave to have sex with Doris while Eddie watched. Eddie then began to touch Dave in Doris' presence. On a late December evening Eddie, Dave, and Doris all smoked marijuana together. Eddie came on to Dave sexually and penetrated Dave anally in Doris' presence. Doris abruptly left the building and Dave went after her.

Dave had a difficult time understanding why Doris was so upset. They talked about how the relationship between Eddie and Dave had started years ago with Dave playing X-Box and being paid to let Eddie touch him. Doris related that she had been forced to have sex with her own brother. They talked about both having been sexually abused. Doris by her brother and Dave by Eddie. Dave began to feel he had been manipulated and used by Eddie. Dave had a flood of feelings which he had not previously experienced. Among his feelings were confusion, fear, anger, and self-loathing.

The next morning Dave told his mother with Doris present what had been occurring between Eddie and Dave and how it had started. Dave's mother was very upset. She cried. She said she needed time to figure out what to do. Later on that day she told Dave to telephone and report it to the sheriff's department. Dave called the sheriff's office later that day, but was told that the person to take the report was not in and that he should come in personally and report it. In January of 2105 Dave's mother, Doris, and Dave went to Spartanburg County Sherriff's Department and made a report. Dave and his mother were told that someone would be following up with them and an investigation would occur. According to Dave, there was no referral to Victim Services or for a sexual assault examination or for sexual assault counseling.

According to Dave, he felt relief after he told his mother. He felt good that he had "taken a stand." He said Doris was happy that he had reported it. He felt like he would never have to have sex with Eddie again.

Dave and Doris avoided Eddie when he came to the house to eat. His mother confronted Eddie and told Eddie that they had reported the abuse to the sheriff's office. Eddie tried to say he had never raped anyone and according to Dave he defiantly showed his mother a picture of Dave naked that he had on his phone. According to Dave, Eddie said, "Does this look like rape to you?"

Dave was highly fearful of Eddie. Eddie had told Dave earlier that if he ever reported the sexual acts to the law that Eddie would kill Dave and his family." According to Dave, also in January, Eddie became mean and cruel toward Dave's dog. According to Dave, Eddie smacked the dog with a stick, he threw a firecracker at the dog, and banged on the tin roof of his shed to aggravate the dog, Dave viewed the behavior toward his dog as very threatening.

As the month of January passed without any investigation from the sheriff's office, Dave became more anxious and fearful. His stepfather, Roy, played on this fear. According to Dave, Roy said, "You need to kill Eddie. With him dead you will not have to live in fear anymore. You will never have any peace until Eddie is dead."

According to Dave, his stepfather told his mother that he wanted a shotgun to go deer hunting. They went out and purchased it at a pawn shop and then bought shells for it at another place. Dave reported his fear and anxiety were increasing as the days passed. At times he relived the sexual abuse by Eddie. At other times he imagined Eddie coming to

kill him and his family. His stepfather, too, said he had been abused by Eddie when he was young. The stepfather also said and that on one occasion had tried to poison Eddie, but Eddie did not react to the poison. According to Dave on another occasion his stepfather told Dave that he would shoot Eddie himself and only get 5 years because he had a history of diagnosed schizophrenia.

Dave's anxiety increased, he became confused, more fearful and timid. He became vulnerable and submissive to his stepfather. On the early morning of February 9th, his stepfather loaded the shotgun, put it in Dave's hand and told him, "You have to kill Eddie; it will make everything better; you will not have to hide in a shell, you will not have to worry about being abused ever again." Dave took the gun, walked to the shed, opened the door, walked to Eddie's bed, and fired the gun twice, shooting Eddie.

According to Dave, he went back to the house and told his stepfather he had done it. His stepfather told him to take a shower and to get rid of his clothes which were splattered with blood. According to Dave, his stepfather went to the shed to check if Eddie was dead and also took some of Eddie's money and drugs.

Question # 2: What is Dave's present level of functioning?

Based upon the results of the psychological test battery and interview data, Dave is psychologically distressed; his function is severely impaired in several areas.

Interview data revealed Dave was oriented to person, place, time, and purpose and was not psychotic. The results of the Personality Assessment Inventory validity scales indicate Dave responded to the material inconsistently. Validity scales indicate he answered in a way that suggested he is feeling negative and hopeless about his situation. The highest coefficient of fit with known clinical groups is that of "current suicide". This testing is consistent with his first month of incarceration when he was on suicide watch for the entire month. He reports he is not presently suicidal, but feels very hopeless about his situation. When describing his situation his tone is cynical and resigned. The responses on the PAI clinical scales produced elevations on several scales and subscales suggesting multiple diagnoses and several areas that could be targeted for clinical intervention. Profile patterns of this type are often the result of prolonged abuse and degradation and are suggestive of impairment in functioning in several areas. The subscales that were in the range of clinical significance ($T > 70$) were traumatic stress, cognitive anxiety, affective anxiety, physiological anxiety, cognitive depression, affective depression, thought disorder, and identity problems. The highest elevation on the subscales is on the subscale measuring traumatic stress. The traumatic stress subscale is at a T score of 94.

The DAPS offers a more comprehensive account of Dave's traumatic history. This assessment procedure measures the worst of the traumatic experiences that the respondent Dave has experienced. The experience which Dave rated as the worst of the traumatic events was when Eddie penetrated Dave in Doris presence. Doris's reaction to

this sex act caused a flood of awareness and a realization of the power Eddie had over Dave.

Dave was in a state of traumatic dissociation, emotional blunting, and denial in his sexual relationship with Eddie. He described focusing on a video game or on music and feeling disconnected from part of himself. Until he emotionally connected with Doris and learned about what an intimate relationship involved, he did not recognize that he had been used and abused. This flood of awareness caused him to feel feelings he had not felt previously. He recognized he had been used and abused by Eddie; he recognized that he had been submissive to Eddie and was passive and obedient to the instruction of Eddie. He also felt that he had been an innocent person before Eddie started touching him and using him sexually.

Results of the Personality Assessment Inventory, DAPS, and interview data definitively indicate Dave is suffering from several mental disorders. The most prominent of his psychological disorders are Post Traumatic Stress Disorder, Delayed Onset and Major Depressive Disorder and Recurrent, Present Episode--Severe. These disorders continue to impact Dave and he is currently being maintained on an antidepressant and carefully monitored for suicidal thoughts and behavior.

Question #3. How did the sexual abuse and psychological control exerted by Eddie Richards impact Dave's cognitive and psychological functioning?

After Dave had the emotional shift in his psychological state and realized the sexual contact with Eddie was sexual abuse, he became flooded with feelings of anger, a desire for self-protection, a desire to protect his family and Doris and, at times, filled with self-loathing. According to Dave, Doris and his mother tried to be reassuring—they felt the law would step in, Eddie would be gone and Dave would be safe.

His stepfather, according to Dave, convinced him that he would never feel safe or have peace from Eddie's threats and manipulation until Eddie was dead. Due to his long-time manipulation by Eddie, Dave was more easily influenced by his stepfather than he might otherwise have been. According to Roy, his stepfather, he, too, had been sexually abused by Eddie when he had been younger.

Conclusively, Dave is a sexual abuse victim. The violent and degrading acts produced cognitive, affective, and behavioral changes in Dave that have come to be known as the "Battered Child Syndrome". He suffers at present from severe Post Traumatic Stress Disorder 309.81 and Major Depressive Disorder 296.33. His cognitive problem solving ability had been impaired by the PTSD. During the time of his sexual abuse by Eddie Richards he was a passive and submissive; his later realization of the real nature of this relationship prompted him to report the abuse to authorities. However, without the protection of the law, Dave's fear increased and he was susceptible to his stepfather's influence to take his abuser's life so he could again feel safe.

If additional information is needed, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Lois J Veronen". The signature is written in black ink and is positioned above the typed name.

Lois J Veronen, Ph. D
Licensed Clinical Psychologist

Psychiatric Evaluation**Name: David Boggs****Date of Birth:** [REDACTED]**Date of Evaluation: 3/19/16****Place of Evaluation: Spartanburg County Detention Center****Date of Report: 7/4/16**

Identifying Information: David Boggs is a 19-year-old male evaluated pursuant to a request by his attorney, Beverly Jones.

Reason For Referral: Mr. Boggs has been charged with Murder In Spartanburg County.

Sources of Information:

Spartanburg Mental health center records 2012-2015

Letter from Doris Agnes to her father

MP4 Renneker

MP4 J Bush

MP4 LaChica

Mp4J Mosely

Statements David Boggs 2/27/15

Case File

Photos

Statements Doris Angus

Report of Sexual Abuse 1/7/15

Spartanburg Regional hospital records 2013

SLED reports

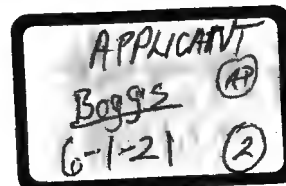
Discovery

**Pertinent Statements:****Developmental History:**

He reports he was sexually abused by the victim of his charges from ages 14 to 17. He reports his cousin Gabriel was recently confined and reported that he too was molested by the victim. He reports the victim would molest him when he was asleep. He stated he would wake up with the victim touching him and then woke up when the victim penetrated him. He reports he told his mother, and she wanted to keep it a secret. He reported that she told her husband, Roy. He also reports his mother and father hit each other.

School History:

He reports he failed the ninth grade. He reports he attended school until 10th grade. He stated he dropped out and has done some warehouse work. There is no history of his being in Special Education, but his mental health center records indicate he was in Resource. Records from mental health indicate he was in 11th grade at Boiling Springs in 12/14.



A note from mental health indicates that on 3/12/13, peers at Boiling Springs teased him in the bathroom which hurt his feelings. The records from 2012 noted that other children called him "Slashy" at school after seeing some of his self-mutilation.

Family History:

He reports his paternal uncle is an alcoholic.

Medical History:

He reports he is presently prescribed Ranitidine for his stomach.

He has a pin in his right hand. He denies any arthritis. He denies any allergies to medications. He reports he was hospitalized when he was four or five years old for severe constipation.

He denies any history of head injury with an associated loss of consciousness. He does report tension headaches.

Psychiatric History:

Mental health center records indicate that in 12/14, Mr. Boggs discussed the victim coming into his home to use the bathroom. He reported that he was uncomfortable around the victim who had a crush on him. At that time, he was diagnosed with Depression, ADHD and prescribed Prozac. His psychiatrist, Dr. Raff has continued to treat him in jail.

A note from 6/11/13 indicated David was spending a lot of time in the shed with his cousin after school until 10:30 pm, and that his mother did not know what he was doing..playing video games. The note indicated his stepfather did not care.

He reports he is presently prescribed Fluoxetine 60 mg daily with "some help." He also reports he has been prescribed Prazosin® for nightmares. He reports he has received treatment from Dr. Raff. He reports he also takes melatonin for sleep. He reports a history of self-mutilation. "It started when I lived with dad." He reported that other students at Byrnes were calling him "gay." He reports he would "tear his flesh and burn himself with cigarettes." His self-mutilating behaviors were noted in his mental health record.

He reports he was treated for ADHD with Vyvanse® . "It did not make a difference." Mental health records note he stopped it around December 2013.

He presently reports recurrent intrusive thoughts of his abuse. "I see pictures of him messing with me...at night. He reports he avoids watching the show Shameless because the victim liked it. He also reported: "I saw a guy in the jail who looked like him, and it freaked me out." He also reports a startle response.

He reports he and his girlfriend had a suicide pact one time.

Substance Use History:

He admits using marijuana. He states that "Roy dared me to smoke Cat Nip one time. I did and it gave me a headache. It was poison." He admitted to snorting his

He was cooperative. His speech was normal in rate and tone. His thinking was goal directed. He was not psychotic. He was not suicidal or homicidal. His affect was constricted. He has a foreshortened sense of the future. When asked what he would be doing in ten years, he replied: "rotting in prison." When asked for three wishes he reported: "to be free, have a house with my girl and be married."

He performed well on a trails test but talked to himself. He was able to reproduce a visual design without error. He performed perfectly on a test of attention. He performed average on a test of verbal fluency. He was able to register five items and recall them correctly after five minutes.

Screening Neurological Examination:

He did have two beat nystagmus (medications). He did not have any frontal release signs. He was able to perform rapid alternating motor movements without perseveration. His tandem gait was normal. His Rhomberg sign was negative.

Diagnoses:

Post Traumatic Stress Disorder
Cannabis Use Disorder, In a Controlled Environment
Borderline Personality Disorder
Gastric Esophageal Reflux
Headaches

Opinions:

1. He has a rational and factual understanding of the proceedings and the capacity to assist in his defense.
2. He was able to determine moral and legal right from wrong and recognized the wrongfulness of his actions.
3. Due to his PTSD, and Borderline Personality, he was unable to conform his conduct to the requirements of the law.

Recommendations:

1. He will require continuation of his medication and long term psychiatric monitoring.

Donna Schwartz Maddox, M.D.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS	
COUNTY OF SPARTANBURG)	FOR THE SEVENTH JUDICIAL CIRCUIT	
)		
)		
David Boggs, SCDC #369103,)	Case No.: 2017-CP-42-2489	
Applicant,)		
)		
v,)	ORDER OF DISMISSAL	
)		
State of South Carolina,)		
Respondent.)		
_____)		

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 SPARTANBURG COUNTY
 JUSTICE CENTER

This matter comes before this Court by way of Applicant David Boggs’s post-conviction relief application filed July 21, 2017, and not received by Respondent the State of South Carolina until July 23, 2020. Respondent made its return on December 16, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on June 1, 2021, at Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General William Ray of the South Carolina Attorney General’s office represented Respondent. Applicant testified on his own behalf at the evidentiary hearing. Applicant’s plea counsel, Beverly Jones, also testified.

After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted during the June 2015 term of the Spartanburg County Grand Jury on one count of murder and one count of possession of a weapon during the commission of a violent crime. (201-GS-42-02327). Applicant was represented by Assistant Public Defender Beverly

Jones of the Spartanburg County Public Defender's Office Deputy Solicitor Derrick Balsa of the Seventh Circuit Solicitor's Office prosecuted the case. On July 25, 2016, Applicant appeared before the Honorable J. Derham Cole, circuit court judge, and pled guilty but mentally ill to the lesser included offense of voluntary manslaughter and possession of a weapon during a violent crime as indicted. The plea was made without any negotiations or recommendation by the State as to a sentence Judge Cole accepted the plea and sentenced Applicant to twenty-five years of imprisonment. Applicant did not appeal his plea or sentence.

Applicant filed an application for post-conviction relief on July 21, 2017, which was not sent to Respondent until July 24, 2020.

Factual History

On the afternoon of February 9, 2015, officers from the Spartanburg County Sheriff's Department were dispatched to a residential address on Wilkie Bridge Road in Chesnee, SC. (Tr. 15, 16-Tr. 16, 2). Upon arrival, officers met with the property owner, Roy Griffin, who directed them to a building near the rear of the property that was being used as living quarters. (Tr. 15, 23-Tr. 16, 2). Officers entered the small building and discovered the body of Eddie Richards. (Tr. 16, 1-3). Richards was lying in his bed, having been shot twice in the head at close range with a shotgun. (Tr. 16, 11-14).

The officers began their investigation by sequestering everyone at the scene in a vehicle and questioning them individually. (Tr. 17, 1-4). Applicant, Roy Griffin's stepson, was present at the scene, broke down, and confessed to shooting Richards. (Tr. 17, 5-7). Applicant stated that he went into the room where Richards was sleeping early the previous morning, fired two rounds, disposed of his clothing, and placed the shotgun in Roy Griffin's bedroom. (Tr. 17, 7-12). When asked why, Applicant mentioned some prior sexual contact between himself and Richards, but

SPARTANBURG COUNTY SHERIFF'S DEPARTMENT
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claimed it was consensual. (Tr. 17, 13-14).

Applicant went with his mother to the sheriff's office to report sexual abuse a month before the shooting. (Tr. 17, 15-18). While speaking with Sergeant Tony Brown, Applicant stated that the alleged abuse had not occurred until he was over the age of consent and that it was consensual. (Tr. 17, 22-25). Applicant explained that he had been receiving gifts in exchange for the sexual contact, and was aware of other victims. (Tr. 18, 1-8). Sergeant Brown told Applicant to bring more evidence and the allegations would be investigated further. (Tr. 18, 5-9). The sheriff's office did not hear back from Applicant until the date of the shooting, four weeks later. (Tr. 18, 10-12).

Action before this Court

In his PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Ineffective counseling"
 - a. "Attorney had advised me to plea guilty."
 - b. "Attorney did not fully explain what I agreed to."
 - c. "I was in court for less than an hour."

Applicant, through Counsel, filed an amended application on May 28, 2021. In the amended application, Applicant alleged the following:

1. Counsel was ineffective for not pursuing a jury trial;
2. Counsel was ineffective for not pursuing a defense that Applicant was forced to kill the victim by his Stepfather;
3. Counsel was ineffective for not pursuing a defense that Applicant did not have the ability to conform his actions at the time of the incident;

At the PCR hearing, Applicant proceeded forward on all of the above mentioned allegations.

Summary of Testimony Presented at Evidentiary Hearing

At the hearing, Applicant testified Counsel was ineffective because Counsel did not pursue a jury trial because there were several defenses he could have raised. Applicant stated his mental

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health issues, evidenced by a pre-trial psych evaluation, would have been enough for a jury to find him not guilty had he proceeded to trial. Two reports from psychiatric evaluations were introduced by Applicant at the hearing. Both evaluations had been order by Applicant's Counsel prior to his plea.

The first evaluation was conducted by Donna Schwartz Maddox, M.D., on March 19, 2016. This report detailed his developmental, educational, familial, medical, psychiatric, substance abuse, social, sexual, and legal history. The reports included statements that Applicant had been sexually abused by the victim, that he had been diagnosed and treated for depression and attention deficit disorder, had engaged in self-mutilation, and had been bullied at school. Regarding the present offense, the report states that the victim had been yelling at him about his dog on the day of the offense and that his stepfather "called him into the house, put the gun in his hand and [his] Mom talked [him] into it." The report states that they formulated a plan to make it appear like a break in before he shot the victim. His stepfather then told him that it looked like the victim was still breathing, but that Applicant started it so it was Applicant's problem. He acknowledged during the evaluation that he did not tell police this version of events, instead he told them that he killed the victim because of sexual abuse and manipulation.

Dr. Maddox's report listed his diagnoses as PTSD, cannabis use disorder, borderline personality disorder, gastric esophageal reflux, and headaches. The report contained specific findings that Applicant had a rational and factual understating of the proceedings and the capacity to assist in his defense, was able to determine moral and legal right from wrong and recognized the wrongfulness of his actions, and that his PTSD and borderline personality disorder rendered him unable to conform his conduct to the requirements of the law.

The second examination was conducted by Lois J. Veronen, M.D., over three sessions

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COUNTY OF MARICOPA
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taking place on May 18, 2016, then June 1, 2016, and finally June 30, 2016. The examination was conducted at Counsel's request and was done for the purpose of examining Applicant's "history of sexual victimization, the impact of his sexual victimization, and to determine whether this history and his psychological profile is consistent with elements of Battered Child Syndrome, Rape Trauma Syndrome, or Battered Person Syndrome."

Dr. Veronen's report stated that Applicant described a situation where the victim had given him money, drugs, alcohol, and electronics in exchange for more and more sexual favors. Applicant's high school girlfriend moved in with Applicant's family because of a tumultuous home life of her own. The report states that her presence in the home created a schism between Applicant and the victim because she did not approve of their sexual relationship. Her disapproval prompted Applicant to tell his mother about the relationship, and it was eventually reported it to the Spartanburg County Sheriff's Department. Applicant stated that he felt relieved that he had "taken a stand." Nevertheless, the report describes a situation where the victim retaliated against Applicant's dog and threatened to kill him. Applicant's stepfather played on these fears by saying Applicant needed to kill the victim so that he would not have to live in fear any longer. The report states that his stepfather obtained a shotgun, loaded it early one morning, handed it to Applicant and told him that he had to kill the victim to make everything better. He then went and shot him twice in the head. His stepfather then told him that to take a shower and get rid of his clothes, before going to the victim's body and stealing money and drugs.

As for his mental state, the report found that Applicant was psychologically distressed and was suffering from several mental disorders, the most prominent being PTSD and delayed onset and major depressive disorder. Dr. Veronen found that Applicant's girlfriend's disapproval of his relationship with the victim was the catalyst that caused him to realize he was being abused.

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become angry, and feel the need to protect himself and his family. His stepfather's behavior convinced him that "he would never feel safe or have peace from Eddie's threats or manipulation until Eddie was dead." Dr. Veronen's report concluded by finding that Applicant was a victim of sexual abuse and suffered from battered child syndrome and PTSD.

Applicant recalled the evaluations being performed and claimed that his post-traumatic stress disorder and borderline personality disorder rendered him incapable of conforming his actions in accordance with the law. He explained his belief that his Counsel did not do enough to raise that issue as a defense, and did not recall reviewing the reports with her prior to entering his guilty plea. Applicant also claimed that his attorney should have pursued a defense that his stepfather forced him to commit the homicide.

During cross examination, Applicant stated that he had first met Counsel while in the county jail and they met several times to discuss possible defenses. It was his belief that she would argue self-defense at trial. Applicant recalled that when he confessed to police that he had broken down and cried. He explained that he was upset at the time because he had shot the victim. Applicant stated that he told police the same thing that he told Counsel. He acknowledged that he did not tell police or Counsel that his stepfather forced him to commit the crime. He admitted that his stepfather did not actually threaten him, nor did Applicant believe that his stepfather would harm him if he did not do the shooting. Instead, he interpreted his stepfather's statement that the situation had "to be taken care of" to mean that he must kill the victim. He also stated that he wished he had spoken to Counsel at greater length about the extent of abuse he suffered at the hands of the victim. Applicant claimed that he did not believe the shooting was wrong at the time, but now he recognizes the true nature of his actions.

Plea counsel Beverly Jones stated she has been practicing law for thirty years, the majority



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of which has been criminal law. She explained that she was appointed to represent Applicant through the public defender's office and met with Applicant multiple times prior to his plea hearing. Counsel stated that Applicant never once asked for a jury trial, rather, Applicant frequently asked for a plea offer. She repeatedly spoke with the solicitor and the police investigators about an offer. However, she did not believe it would be beneficial for Applicant to plead to murder, instead preferring an offer with the lesser included offense of voluntary manslaughter. Only one such plea offer was ever made, and it came on the morning trial was scheduled to begin. Counsel stated that she was prepared to go to trial, had requested that the psychiatric evaluations be performed, and would have raised the findings as part of their defense. Counsel testified that the plan to pursue an insanity defense, based upon the findings of the evaluations, is what compelled the solicitor to offer a plea deal just prior to trial. She advised Applicant to accept the offer to plead guilty but mentally ill to voluntary manslaughter, rather than proceed to trial facing a murder charge. She stated that it was ultimately Applicant's choice to accept the plea offer.

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Counsel confirmed that the self-defense was discussed, but only once so that she could explain that it was contrary to all of the evidence and would not fit. She noted that the victim had been shot in the head twice while he was sleeping. She further explained that she had many other conversations with Applicant, where they spoke about his life and his case. Applicant had often expressed remorse and stated that he would regret the crime for the rest of his life, leading her to believe he understood the nature and impact of his actions. She felt that a jury would not find him to be legally insane.

She explained that Applicant never told her that his stepfather forced him to kill the victim during the course of these conversations. Instead, she found out about this story about ten months

before the plea in letters written by Applicant were intercepted by the prison mailroom. She did not believe that this story was credible, because the extent of the stepfather's involvement was unclear, if he was involved at all.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-70 and -80.

Ineffective Assistance of Counsel Generally

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional

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norms.” *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies: if it is

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easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Pursue a Jury Trial

Applicant alleges that his plea counsel was ineffective for failing to pursue a jury trial. This allegation is without merit.

With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985). The analysis of counsel's performance under the first prong of *Strickland* remains unchanged—Applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. *Id.* at 58-59. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. *Id.* at 58-59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant must "show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

Applicant has failed to meet the burden imposed upon him. The record shows that Applicant frequently requested a plea offer, and accepted the first one that was made. He did so with the reasonable advice of competent counsel, with a full understanding of the agreement's terms and its consequences. His plea counsel testified that she was ready and willing to go to trial, but that he freely, voluntarily, knowingly, and intelligently entered a plea of guilty but mentally ill. Applicant has not shown that his counsel was deficient in negotiating the plea, preparing a defense, or advising him about his case. Furthermore, he has not shown that he was prejudiced by

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her performance, because he has not established that he would have proceeded to trial but for her errors. Therefore, he has not met the burden imposed upon him of proving deficiency or prejudice, and the allegation that his plea counsel was ineffective for failing to pursue a jury trial is hereby dismissed with prejudice.

Failure to Pursue a Defense of Duress

Applicant alleges that his plea counsel was ineffective for failing to pursue a defense of duress, because his stepfather allegedly forced him to kill the victim.

Duress requires evidence showing that "the degree of coercion [was] present, imminent, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done." *State v. Robinson*, 294 S.C. 120, 363 S.E.2d 104 (1987). Duress is not a defense to murder and cannot be used to mitigate the crime of murder to voluntary manslaughter. *State v. Rocheville*, 310 S.C. 20, 425 S.E.2d 32 (1993).

Applicant testified that his stepfather forced him to commit the crime but did not threaten him, nor did he believe he would be harmed if he did not shoot the victim. He further testified that he did not tell his attorney or police about this theory of the case. Counsel confirmed that Applicant did not tell her this story, but instead came to be aware of it when Applicant's mail was intercepted by the jail's mail room. She did not believe that the story was credible, nor could it be proven at trial, so she did not pursue it as a defense. This Court finds that this is an objectively reasonable interpretation of this evidence, and therefore finds no deficiency in counsel's performance.

Furthermore, the purported defense would have failed on the merits because Applicant stated that his stepfather did not threaten him and that he was not in fear of being harmed if he did not commit the crime. In fact, evidence shows that Applicant was not forced by his stepfather to do anything at all, instead he simply interpreted something he said to mean he should go shoot and

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kill a sleeping man. There is no reasonable probability that this defense would have prevailed at trial. Therefore, Applicant has not met the burden imposed upon him of proving deficiency or prejudice, and the allegation that his plea counsel was ineffective for failing to pursue a defense that Applicant's stepfather forced him to commit the crime is hereby dismissed with prejudice.

Failure to Pursue a Defense that Applicant Lacked the Ability to Conform his Actions to the Requirements of the Law

Applicant alleges that his plea counsel was ineffective for failing to pursue a defense that he was unable to conform his actions to the requirements of the law. This allegation is without merit.

If a person is unable to conform their conduct to the requirements of the law, he or she may still be found guilty and sentenced to incarceration. S.C. Code Ann. §17-24-70. If they are found guilty but mentally ill, they will first be taken to a mental facility for treatment until they may safely be integrated in the general prison population. *Id.* A defendant may only avoid criminal liability due to mental illness or insanity if, at the time of the commission of the crime, they lacked the capacity to distinguish moral or legal right from wrong. S.C. Code Ann. §17-24-10.

Here, Applicant entered a guilty but mentally ill plea to voluntary manslaughter. Applicant's assertion that Counsel was deficient in failing to present his inability to conform his actions to the requirements of the law cannot stand, because that was the key to Counsel's plea negotiations. Counsel ordered two psychiatric evaluations in preparation for trial. These evaluations found that Applicant could not conform his actions to the requirements of the law, but also found that he knew the difference between right and wrong, and was motivated to commit the crime when he realized the true nature of his sexual relationship with the victim. Counsel used this information to prepare a defense, but did not believe that it would have prevailed at trial.

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Nevertheless, Counsel stated that the plea offer was made only after it became clear that the defense at trial would be that Applicant was legally insane. Counsel's use of this piece of evidence was crucial to getting Applicant a plea offer that, as discussed above, he eagerly and knowingly accepted. Counsel was not deficient in this regard because the evidence shows that she did precisely what Applicant is now claiming she did not do.

Furthermore, Applicant was not prejudiced by Counsel's performance. At best a jury would have found him guilty but mentally ill, which was precisely the plea offer that he accepted. Simply put, Applicant would have benefitted in no way by presenting this defense at trial, in light of all the evidence in the record. Therefore, Applicant has failed to meet his burden of showing deficiency or prejudice, and allegation that Counsel was ineffective for failing to pursue a defense that unable to conform his actions to the requirements of the law is hereby dismissed with prejudice

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Conclusion

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

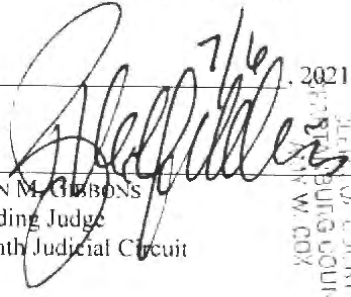
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this _____ day of _____, 2021.

BRIAN M. GIBBONS
Presiding Judge
Seventh Judicial Circuit



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_____, South Carolina.

WITNESSES

Spartanburg County Sheriff's Office

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ARREST WARRANT NUMBER

2015A4210200472 (Count One)

2015A4210200473 (Count Two)

ACTION OF GRAND JURY

True Bill

[Handwritten signature]

MAY 29 2015

Foreperson of Grand Jury

Date:

1. REPORTED

2. CARD FILED

3. INDEXED

4. CHECKED WARRANTS

5. CHECKED SIGNATURE

6. ASSESSMENT AND

Foreperson of Grand Jury

Date: 7. TRAFFIC VIOLATION COPY

OR
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DOCKET NO.

15-GS-42-2327

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 01 2015

TERM

THE STATE

vs.

David Ronald Boggs, III

Indictment for

COUNT ONE-MURDER, COUNT TWO-
POSSESSION OF WEAPON DURING
VIOLENT CRIME

SC Code 16-03-0010, 0020, 16-23-490

CDR Code 116, 549

Class FEL-EXM

plea accepted 7/25/16

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M. HOPE BUCKLEY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

STATE VS. David Ronald Boggs III

AKA:

Race: WHITE Sex: M Age: 19

DOB: SS#:

Address:

City, State, Zip: Spartanburg SC

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

TO: Manslaughter / Voluntary manslaughter

INDICTMENT/CASE#: 2015GS4202327

A/W#: 2015A4210200472

Date of Offense: 2/9/2015

S.C. Code §: 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS GUILTY

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: BULSA, DERRICK SC Bar# David Boggs Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 36-5-2995 (DUI Assessment) \$12, § 36-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(B) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$3.75.

TOTAL \$128.75

Clerk of Court/ Deputy Clerk Court Reporter: SCCA217 (07/2016)

PTUP days/hours Public Service Employment

Obtain GED Attend Voc. Rehab. or Job Corp.

May serve W/B beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge Judge Code:

Sentence Date: 2/26/2015

plus accepted 9/25/16

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

David Ronald Boggs III

AKA:

Race: WHITE Sex: M Age: 19

DOB: SS#: DL#: SID#

Address:

City, State, Zip: Spartanburg SC

DL#: SID#

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS BUT TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

In violation of 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTES: BULSA, DERRICK SC Bar# Defendant: David Boggs Attorney for Defendant: SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years-or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code 17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$ Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like 14-1-206 (Assessments 107.5%), 14-1-211(A)(1) (Conv. Surcharge) \$100, 14-1-211(A)(2) (DUI Surcharge) \$100, 56-5-2995 (DUI Assessment) \$12, 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, 14-1-212 (Law Enforce. Funding) \$25, 14-1-213 (Drug Court Surcharge) \$150, 50-21-114 (BUI Breath Test Fee) \$50, 56-5-2942(J) (Vehicle Assessment) \$40/ca, 3% to County (if paid in installments) \$3.75.

TOTAL \$128.75

Clerk of Court/ Deputy Clerk: C. Pool
Court Reporter: L. McPhee
SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS COMPUTER

INDICTMENT/CASE#: 2015GS4202327A
A/W#: 2015A4210200473
Date of Offense: 2/9/2015
S.C. Code 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

CONVICTED OF or PLEADS BUT TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

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Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge:
Judge Code:
Sentence Date: July 26, 2016

Handwritten signatures and date: July 26, 2016. Includes a 'SCANNED' stamp.